The Lawyer Outlaw'd;

Or a BRIEF

ANSWER

To Mr. HUNTS Defence of the

CHARTER.

With some Useful

REMARKS

ON THE

Commons Proceedings

IN THE LAST

PARLIAMENT

At WESTMINSTER.

In a Letter to a Friend.

By Sir Roger L'Estrange

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SIR,

YOur importunities have at laſt prevail'd, and ſince abler Pens have hitherto declin'd to eſpouſe the quarrel, I will for once force my own inclination to ſilence and reſervedneſs, and briefly give you my thoughts on that unlucky *Pamphlet*, call'd, *A Defence of the* Charter *and Municipal Rights of* London.

The *Author*, I find, is a *Gentleman* of the *long Robe*, a perſon ſo well known of late for his unweary'd diligence, and extraordinary faculty in ſcribling, that I need not give you any other *Character* of him, but that ſome three years ago he writ a *Book* in vindication of *the Biſhops Right of Judicature in Parliament*; and for this piece of ſervice expected no leſs than to be made *Lord-Chief-Baron* of the *Exchequer* in *Ireland*. But miſſing of that Preferment, he grows peeviſh and angry with the *Court* and *Clergy*, and to be even with both, and perhaps to appeaſe his angry *Brethren* of the *Separation* for his former *Mercenary* undertaking, he adds a *Baboons Tail* to his *Picture*, a *Poſtſcript* to his *Book*, the moſt virulent and malicious, that has yet eſcap'd the hands of *Juſtice*. Ever ſince, he has continu'd firm to the *Cauſe*, laid aſide his uſeleſs *Law*, and zealouſly imploy'd his *better Talent* againſt the *Church* and *State*, in favour of the *Faction*; and this about the *Charter* is the laſt effort of that wiſe *Head-piece*, which he has ſtuff'd with ſuch a miſcellany of wild *Paradoxes*, interwoven with ſome impertinent *Truths*, that 'tis far more difficult to digeſt them into method, than to anſwer and confute them.

Firſt, to lay a ſolid foundation for his great deſign, he tells us, *That Monarchs, as well as Republicks, have often erected Municipal Cities, and by their* Charters *beſtow'd upon them ſeveral* Franchiſes *and* Priviledges, *as to chooſe their own* Magiſtrates, *and govern by their own* Laws, *while ſubſervient to the* publick Laws *of the* Sovereign Authority, pag. 1. This is certainly very true; but how far it makes for the *Charter* of *London*, againſt the *Quo Warranto*, is a *Myſtery* not to be comprehended by every vulgar capacity: for 'tis no leſs plain in *Hiſtory*, that not only *Tyrants* and *Uſurpers*, as he mentions, but juſt and lawful *Sovereigns*, have divers times ſuppreſs'd ſuch *Municipal Cities*, for good and neceſſary cauſes, as for being diſloyal to their *Prince*, or factious and ſeditious againſt the *Government*; and then the main *Queſtion* will be, How far the City of *London* has of late been guilty of ſuch Crimes, as by Law deſerve the like Puniſhment?

This, in ſhort, is the plain ſtate of the *Queſtion*; for 'tis moſt unreaſonable to think, that any *King* or *Republick* ever gave their *Municipal Cities* any ſuch *Liberties* or *Immunities*, as were not forfeitable upon their abuſing the Power they receiv'd; when otherwiſe, neither *Prince* nor *People* cou'd be

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ecure from the insolence of such *uncontroulable Citizens*, without a standing Army to keep them in awe. But our *Gentleman*, it seems, is unwilling to touch upon this *critical point* of speculation; and as the *Defence of the Charter* is the least part of his *Pamphlet*, so now he runs quite from the purpose, to tell the *King* like a dutiful Subject, He may, if He please, take His *Quietus est*, and let His people govern themselves; *For it is impossible* (saith he) *that mankind should miscarry in their own hands*, pag. 2. Now, since they have often miscarry'd in the hands of *Princes*, is it not more expedient for the *publick good*, if this *Maxim* will hold, that the *Prince* shou'd mind his own private business, and not trouble himself with the *Government*, which the *People* can do better without Him?

This is Mr. *Hunt*'s new *Model* of *Government*, who out of pure love and kindness to the *Monarchy*, chalks out a ready way for his *Sovereign* to ease Himself of all the thorns and prickles of His *Crown*, and become a *glorious King* like His Father; And therefore seems very angry, that the *Court*, (*i. e.* the *King*) should be troubl'd with the *Power* of appointing *Officers* in any *City* or *Corporation* in the *Kingdom*, tho' it be found of absolute necessity for the keeping His *Crown* upon His Head, and protecting His best Subjects from a Band of *Associators* and *Ignoramus-Juries*.

Oh! *But by this new form of Corporations, it will be in the power of a* Popish Successor *to put the Government of all Corporated Towns in* England *into the hands of* Papists, p. 5. And without it, I say, it will be no less in the *power* of the *Faction*, to put the same *Government* into the hands of *Fanaticks*. What a *Bugbear* is this *Popish Successor*! whose very Name turns the brains of a *Whig* into a *Magnifying-glass*, that will transform *Ants* into *Gyants*, and *Mole-hills* into *Mountains*! We have as good Laws as the wit of man can devise, to secure us from the encroachments of *Popery*, and to disable *Papists* from bearing any *Office*, *Civil* or *Military*, either in or out of *Corporations*: and yet this *Popish Successor*, who possibly may never succeed, this great *Goliah*, can break through all those Laws, and will certainly do it, to curry favour with a *handful* of *Papists*, and make himself a *Slave* to the *Pope*.

This is not all; *For this mode* (saith he) *of incorporating Cities and Towns, doth* ipso facto *change the Government; for that* One *of the* Three States, *an essential part of the* Government, *which is made up of the* Representatives of the People, *and ought to be chosen by the* People, *will by this means have five sixth parts of such* Representatives, *upon the matter, of the* Courts *nomination, and not of the* Peoples *choice;* ---- *and at the next turn we shall have a* Parliament *of* Papists *and* Red-coats, pag. 6. O *profound Politician*! has not our *Government* been *Regal* and *Monarchical* from the beginning? how then can the *House of Commons*, in comparison but a late Institution, necessary not for the *Being*, but for the *Well-being* of the *Monarchy*, be an *Essential part* of it? Or how can any *Ruler* be term'd a *Monarch*, that has 500 *Demagogues* Joynt-Governours with Him? These, and such other *Republican Maxims*, have been in a great measure the main foundation of all the miseries and confusi-

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ons we ſuffer'd under the late *Tyranny* of the *Rump-Parliament*; and after our ſad experience of thoſe *Tragical* times, ſurely we have reaſon to think, that none but ſuch as wou'd bring us back to the ſame calamities, and ſing the ſecond part to the ſame Tune, would now endeavour to aſſert or maintain them: yet they are ſo very familiar to our *Iriſh Chief-Baron*, that there is hardly a page in moſt of his *Pamphlets*, but has a ſtrong tincture of them. In his *great and weighty Conſiderations conſidered*, he ſays, *The Parliament derive Their Authority from the ſame Original the King derives His: The* King *hath not His Power from* Them, *nor* They *theirs from the* King: *They* Both *derive their Authority from the* conſent of the People, *either* tacit *or* expreſs, *in the firſt inſtitution of the* Government, *or in the ſubſequent alterations of it*, pag. 16. Is not this a rare *Aſſertor* of the *Monarchy*, that makes *both Houſes* thus *co-ordinate* with the *Prince*, and all the Three *ſubordinate* to the *People*; turns the *Governed* into *Govornours*, and leaves to the *King* the *Title* only, but to His Subjects the *Power* and *Dominion*? The Law tells us, *That all Authority and Juriſdiction, Spiritual and Temporal, is derived from the* King, 1 *Ed.* 6. c. 2. §. 3. And *Plowden*, as great a *Lawyer* perhaps as Mr. *Hunt*, ſays, *That the* King *has the* ſole Government *of His Subjects*, fol. 234, *a.* How then can Mr. *Hunt* make the *People* the Original of Power, ſince all is derived from the *Prince*? or how can *either* or *both Houſes* of *Parliament* pretend of themſelves to have any ſhare in the *Government*, which is wholly in the *King*? or claim any *Authority* or *Juriſdiction* over the *People*, but as deriv'd from the *Sovereign*?

Let us therefore explode theſe *Republican Notions*, that have coſt us ſo dear, and cannot in the leaſt avail either *Parliament* or *People*, but will always make the *Prince* jealous of their proceedings, who can better hear the *complaints* and *humble Petitions* of his *dutiful Subjects*, the conſtant * ſtile of our ancient *Acts of Parliament*, than the *Imperious* dictates of his *fellow-Governours*; for, experience confirms what *Lucan* long ſince has told us,

Nulla fides Regni ſociis, omniſq; poteſtas
Impatiens conſortis erit.

But how ſhou'd this new form of *Corporations* make their *Repreſentatives* in *Parliament*, not of the Peoples choice, but of the Courts nomination, is not very intelligible in my apprehenſion: ſince every *Cobler* can tell, the *Free-men* of *Corporations*, and not their *Officers*, have the ſole power of electing their *Repreſentatives*. Where then is the danger of a *Parliament* of *Papiſts* and *Red-coats*, (tho' there had been no Law to diſable the former from ſitting in the Houſe, till they forſwear themſelves, or abjure their principles) unleſs the major part of the *Free-men* of *England*, which I hope ſhall never happen, be ſuppos'd to embrace the *Popiſh Religion*? We have ſeen, to our coſt and to our ſhame, a *pretended Parliament* of *Red-coats* and *Round-heads*, which like the *Ægyptian* Locuſts devour'd all the fruit of the Land, and turn'd *Europes*

* In making our ancient Laws, (ſaith the great Antiquary Mr Selden) the *Commons* did *petere*, the *Lords aſſentire*, & the *King concludere*: in his *Judicature in Parliament*, pag. 132.

Paradiſe into a *Field of Blood*; and this bleſſing we owe to Mr. *Hunt's* poor harmleſs *Diſſenters*; which I hope will make us ſo wiſe for the future, as never to give them the like opportunities.

It were endleſs to follow this *lawleſs Scribler* through every page and paragraph, or ſeverally to take notice of all his incoherences, and impertinent digreſſions. To come therefore cloſe to the buſineſs of the *Charter*, we muſt turn over many pages, and ſtep from the beginning almoſt to the end of his *Pamphlet*, to find out ſomething that may ſeem to the purpoſe. Three points he offers at laſt in defence of the *Charter*, which he ſays to the *Londoners*, *he comes to defend againſt theirs*, and he might add as well, his own, *reaſon and underſtanding*, p. 31. For if he has a *grain* of *Law* or ſenſe left, he knows that of theſe points the firſt is impertinent to what he undertakes, and the reſt but *fallacious cavillings*, to impoſe upon the *Vulgar*, and make them obſtinate to their coſt.

Firſt, he ſays, *That the* Diſſenters, *tho' Excommunicate, have a vote in the Election of their Officers.* 2ly. *That the* Common-Council *cannot deſtroy or ſurrender the* Charter. 3ly. *That the Sherivalties of* London *and* Middleſex *are in the* City *by* Common *or* Statute-Law; *and conſequently not to be diſplac'd, but by* Act of Parliament, *tho' with the conſent of every individual* Citizen, p. 32. For the firſt, he takes a world of pains to prove, that the *Excommunication* of *Diſſenters* does not render them uncapable of giving their *Vote* in the *Election* of the *City-Officers*. And what then? Is the *Charter* never to be forfeited, while the *Diſſenters* have a *Vote* or *Suffrage* in ſuch *Elections*? or are they ſo numerous in the *Common-Council*, as to out-vote the *Members* of the *Church* of *England*? are their tender conſciences ſtill ſo plyable, as to receive the *Sacrament* in their *Pariſh-Church* to ſerve a turn, and run to a *Conventicle* all the year after? to take *Teſts* and *Oaths* to get into *Imployments*, and break all with a breath to promote the *Good Old Cauſe*? nay, venture to forfeit their *Ears* to the *Pillory*, and their *Souls* to the *Devil*, to help off an active *Brother* catch'd by the **Tongue**? Theſe are the *harmleſs Clients* of our *Iriſh Chief-Baron*, of whom we may well ſay with the *Poet*,

----- *Mille adde catenas,*
Effugiet tamen hac ſceleratus vincula Proteus.

Theſe, I mean, not the miſ-led or ſeduc'd, but the *Heads* and *Ring-leaders* of the *Faction*, who always *hold with the Hare, and run with the Hound*, and make *conſcience* of nothing but *Conformity*, and yet *conform* for *Preferment*. To theſe their deluded followers owe all the *ſeverities* of late uſed againſt them, and the *City* this ſo-much-talk'd-of *Quo Warranto*, with all the unlucky conſequences, which Mr. *Hunt* ſays are like to attend it: there being no other way to reſcue the *Government* out of their hands, or ſecure *His Majeſty's Crown and Dignity*, and the *Lives* of his *good Subjects*, from *pack'd Juries*, and *perjur'd Ignoramus's*.

But *they have* (ſays our Lawyer) *an utter abhorrence againſt* Popery *and the* Plot, *and joyn forwardly and zealouſly againſt it*, p. 16. 'Tis true, they make

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a great noise and buffle about that *horrid Conspiracy*, but in reality they have done more than the *Papists* were able to do, to stifle and confound it. They attaqu'd the *Church of England*, whilst in the heat of prosecuting the *Conspirators*, and labour'd under the *Umbrage* of the *Popish-Plot*, to carry on another of their own, to subvert the establish'd *Government*, and insensibly to decoy us into *Presbytery*, and their darling *Commonwealth*; as the *Tryal* and *Condemnation* of their *Proto-Martyr Colledge*; their *Green-ribbon-Clubs*, and *Ignoramus-Juries*; their *Vox Patriæ's*, and *Vox Populi's*; their *Appeal from the Countrey to the City*; the *Speech* of their *Noble Peer*; and, in short, the tendency of all their *Seditious Libels*, back'd with the *Depositions* of several *Witnesses*, do as plainly demonstrate, as *Coleman's Letters* and *Execution* prove the wicked designs of the *Papists*. They inveigl'd some of the principal *Discoverers* of the *Popish-Plot* to espouse their *Party*, and vilifie the *Church*; which frightn'd many a *Loyal Gentleman*, that cou'd not forget the Contrivances of the late times, where *Popery* was the *First*, but *Monarchy* the *Last Act* of the *Tragedy*, and made them suspect these same persons, now their hand was in, might at last be wrought upon, to turn against the obedient Sons of the Church, whom they had already stigmatiz'd with the ignominious Names of *Tories*, *Masqueraders*, and *Church-Papists*. In short, they contriv'd so many shams and silly stories, as made the very truth questionable; and when they saw the *English Plot* was not like to embroil the Nation, they invited a number of profligate wretches out of *Ireland*, gave them *Cloaths* and *Money* in abundance, and took so much pains to set up these *unmanageable Tools*, that in fine they dash'd both *Plots* to pieces, one against the other.

Are we not then beholding to our *true-blew-Protestants*, after all these fine exploits, for their abhorrence against *Popery* and the *Plot*, and to Mr. *Hunt*, for his *zealous vindication* of their Proceedings? He was formerly suspected to be a man of *no Religion*; but now, like a generous *Soul*, he owns his Party in their greatest distress, and openly declares against the *Church* of *England*, as *Betrayers* of *God's Cause*, and the *Peoples Liberties*. *Some of little understanding among you* (saith he) *that thus behave your selves, are excusable, as misguided by some of your* Ministers, *who are in good earnest begging Preferments, Dignities and Benefices for themselves, by offering and betraying our* Church *to a voluntary* Martyrdom, p. 12. I need not comment upon this scurrilous *Reflection*, 'tis enough to say, 'tis the product of Mr. *Hunt's* own Brains, who, according to his Fee, tho' against his conscience, spoke for his Clyents; for *Lawyers*, he tells us, (and who more fit to know?) *have* Opinions *to sell at any time, tho' they have not the least colour of* Reason *to support them*, p. 19. If this *Confounder* both of *Law* and *Gospel*, be thus for fouling his own Nest, we need not wonder at his frequent snarlings at the *Loyal* and *Christian* Resolutions of our *Reverend Clergy*, or expect better usage from a man that openly sides with the *Enemies* of our *Church*.

I come now to his *second* point, which is so wild and so extravagant a paradox,

radox, as deserves rather to be laugh'd at by men of sense, than to be answer'd or confuted: since, besides several that have done it within these two years past, there are not many *Corporations* in *England*, whose *Charters* have not been surrendred by their *Common-Council*, without so much as consulting their *Common-halls*; and yet were never question'd for it, as *Betrayers* of their Trust, or of the *Liberties* of the *People*.

But he drives home the Nail in his 3*d*. assertion, where he says, that the *Sherivalties* of *London* and *Middlesex*, or the right of chooſing their *Sheriffs*, (the main point now in dispute, and what most concerns the *King*, after our late experience, to have in His own disposal) cannot be parted with, without an *Act of Parliament*, tho' with the consent of every individual *Citizen*. But sure the *Gentleman* is not in earnest; for I hope he will allow us, that tho' alone they cannot, yet with the consent and approbation of the *Common-hall*, or of every *Citizen*, the *Common-Council* may surrender the *Charter*: who then, the *Charter* being thus surrendred, has the power of chooſing the *Sheriffs*, when the *Corporation*, the *City* and the County is dissolv'd, neither *Mayor* nor *Alderman*, *Citizen* nor *Free man* to found? The *Inhabitants* in general cannot choose them, for they have no right now to do it, neither do they receive any new power by the *surrender* of the *Charter*; and yet the *Free-men* cannot, when there is no such thing in being, no more in *London* than in *Westminster*, or any other Dissolv'd Corporation.

But to be short in a Case so plain, since the Gentleman requires an *Act of Parliament* for displacing the *Citizens* Right of chooſing their *Sheriffs*, here is One ready to his hand, for taking away, upon their *neglect* or *misgovernment*, all their *Franchises* and *Liberties*, and consequently this power of electing their own *Officers* and *Magistrates*; an Act found by the prudence of our Ancestors, so necessary for to maintain the publick Peace, and keep that *over-grown City* within the bounds of duty, that *Henry* IV. tho' he sought occasions to ingratiate himself with the People of *London*, the better to secure his Usurpation, yet cou'd not be wrought upon by their intreaties to have any material part of it alter'd, much less annull'd or repeal'd. The Act take as followeth.

28o. Edwardi 3i. cap. 10o.

BEcause that the Errors, Defaults and Misprisions, which be notoriously used in the City of London, for default of good Governance of the Mayor, of the Sheriffs, and the Aldermen, cannot be enquired nor found by people of the same City: it is ordained and established, That the said Mayor, Sheriffs and Aldermen, which have the Governance of the same City, shall cause to be redressed and corrected the Defaults, Errors, and Misprisions above-named, and the same duly punish from time to time upon a certain pain; that is to say, at the first Default a Thousand Marks to the King, and at the second Default two Thousand

Thouſand Marks, and at the third default, that the Franchiſe and Liberty of the City be taken into the King's hand. And be it begun to enquire upon them at St. Michael next coming, ſo that if they do not cauſe to be made due redreſs, as afore is ſaid, it ſhall be enquired of their Defaults by Enqueſts of people of Foreign Counties; that is to ſay, of Kent, Eſſex, Suſſex, Hertford, Buckingham, and Berk, as well at the King's Suit, as others that will complain.

And if the Mayor, Sheriffs and Aldermen, be by ſuch Enqueſts thereto aſſigned, Indicted, they ſhall be cauſed to come by due Proceſs before the King's Juſtices, which ſhall be to the ſame aſſigned out of the ſaid City, before whom they ſhall have their Anſwer, as well to the King as to the Party. And if they put them in Enqueſts, ſuch Enqueſts ſhall be taken by Foreign People, as afore is ſaid. And if they be Attainted, the ſaid pain ſhall incurr and be levied of the ſaid Mayor, Sheriffs and Aldermen, for default of their Governance. And nevertheleſs, the Plaintiffs ſhall recover the treble Damages againſt the ſaid Mayor, Sheriffs, and Aldermen. And becauſe that the Sheriffs of London be Parties to this buſineſs, the Conſtable of the Tower, or his Lieutenant, ſhall ſerve in the place of the Sheriffs, to receive the Writs, as well Originals of the Chancery as Judicials, under the Seal of the Juſtices, to do thereof execution in the ſaid City. And Proceſs ſhall be made by Attachment, and Diſtreſs, and by Exigent, if need be: ſo that at the King's Suit the Exigent ſhall be awarded after the firſt Capias returned, and at the third Capias returned at the Suit of the Party. And if the Mayor, Sheriffs and Aldermen have Lands or Tenements out of the City, Proceſs ſhall be made againſt them by Attachments and Diſtreſſes, in the ſame Counties where the Lands or Tenements be. And that every of the ſaid Mayors, Sheriffs and Aldermen, which do appear before the ſaid Juſtices, ſhall anſwer particularly for himſelf, as well at the peril of other which be abſent, as of himſelf. And this Ordinance ſhall be holden firm and ſtable, notwithſtanding any maaner Franchiſe, Priviledges or Cuſtoms. And this Ordinance ſhall extend to all Cities and Boroughs of the Realm, where ſuch Defaults or Miſpriſions be uſed, and not duly corrected nor redreſſed: ſaving that the Enqueſts ſhall be taken by Foreign people of the ſame County where ſuch Cities or Boroughs be. And that the pain of thoſe of the ſaid Boroughs and Towns, which ſhall be thereof Attainted, ſhall be judged by the Diſcretion of the Juſtices, which ſhall be thereto aſſigned.

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This Act was a great Curb to the people of *London*, and kept them for many years after, very *obsequious* and dutiful to their *Sovereign*; but in process of time, finding it was not duly put in execution, they began to forget it at last, and wou'd now and then break out into some *extravagance*, which afterwards cost them very dear. Finding therefore themselves very uneasie under this restraint, tho' neither in *Edward* III. nor his Successor's Reign they durst motion to have that Statute repeal'd, yet when the *Usurper Henry* IV. came to the Crown, they labour'd hard to get themselves rid of it, but cou'd gain no more than the following Clause; which many in *London*, who always think ill of the *King* and His Ministers, will think of no great *advantage* to the *Defence of the* Charter.

Our Lord the King considering the good and lawful Behaviour of the Mayor, Sheriffs and Aldermen, and of all the Commonalty of the same City of London **towards Him, and therefore willing to ease and mitigate the Penalty aforesaid, by the assent of the Lords Spiritual and Temporal, and of the Commons aforesaid, hath Ordained and Established, That the Penalty aforesaid, as well of the Thousand Marks, and of the two Thousand Marks, and of the seizure of the Franchise comprized in the said Statute, shall not be limited in a certainty, but that the Penalties in this case be by the advice and discretion of the Justices thereto assigned, as other Cities and Boroughs be within the Realm; And that the Remnant of the same Statute, and the Process thereof, stand in their force,** 1 H. 4. cap. 15.

Now, I appeal to Mr. *Hunt*'s own Judgment, provided he has so much *moral* honesty, to speak nothing of his skill in the Laws, as will qualifie him for an *Irish Chief-Baron*, Whether or no these two *Statutes* be not as plain against the *Charter*, supposing the *Mayor*, *Sheriffs* and *Aldermen* to have been negligent in their duty, and *a fortiori* if they and the *Common-Council* be found guilty of the Crimes laid to their charge, as *Magna Charta* or the *Petition of Right* is for the *Liberty* and *Property* of the Subject; For, that 'tis neither *Treason* nor *Felony*, nor yet the *Subversion of the Government*, but Crimes of a far inferiour nature, that are meant by the Errors and Misdemeanors mentioned in the said *Acts*, is apparent by another *Statute* made some three years after, by the same King *Edward* III. where it is Enacted, "*That the Mayor and Aldermen of* London *shall rule and redress the defaults* "*of Fishers, Butchers, and Poulters, and put the same in execution, upon* "*the pain late ordained touching the City of* London, 31 *Ed.* 3. cap. 10. Now, if the whole *City*, for a bare neglect of duty in their *Officers*, as for omitting to punish the Misdemeanors of silly *Trades-men*, were by these *Acts* of *Edward* III. so grievously punishable, as for the first Offence to forfeit a Thousand

ſand Marks, (then no leſs in the intrinſick value than 2000*l.* of our now current *Coyn*, and near ten times ſo much in the preſent uſe and price of things) and were to double that ſum for the ſecond offence, and for the third to forfeit their *Franchiſes* and *Liberties* to the *King*: what ſhall be thought of others, if they are found not only to have laid an *Illegal arbitrary Tax* upon their *fellow-Subjects*, and in a tumultuous manner invaded their *Properties*; but wink'd at, if not encourag'd, the publiſhing of *Treaſonable Papers* and *Pamphlets*; and inſtead of ſuppreſſing others, preſented their *Prince* with a moſt *Scurrilous* one of their own, by way of *Petition*, to tax *His Majeſty* with *miſgovernment*, and endeavour to bring Him into *hatred* and *contempt* with his *People*?

As for the aforeſaid *Clauſe* of 1 *H.* 4. tho' intended for (as really it was) a great favour to the *City*, that they ſhou'd not for every trifling fault be oblig'd to pay ſuch a vaſt Fine as a Thouſand Marks, twenty times greater than that ſum now; yet if their Crimes had been found of a tranſcendent nature, ſtriking at the very *Root* and *Life* of the *Government*, we may be ſure the *Juſtices*, by vertue of this very *Clauſe*, wou'd have immediately ſeiz'd their *Charter*, without bringing them to any further Tryal. So that this *Clauſe*, tho' in ſmall inferiour miſdemeanors it be a great advantage to the *City*, yet in Crimes of *State*, where the *Crown* and the *Monarchy* are concern'd, 'tis no leſs an advantage to the *King*.

Thus, *Sir*, you have ſeen how well Mr. *Hunt* has defended the *Charter* againſt all the Power both of *Law* and *Reaſon*, and you will find him altogether as happy in the reſt of his undertakings. I omit his impertinence on the Play, call'd, *The Duke of Guiſe*, his unmannerly application of the *Characters*, and his framing of *Parallels* where little or no ſimilitude can be found: Yet *en paſſent* I cannot but pity the condition our Lawyers INNOCENT and GENTLE PRINCE is reduc'd to, by the ſlie inſinuations and bewitching flatteries of this and ſuch other *Sycophants* of the *Faction*, who puff'd him up, and poſſeſs'd him with ſuch *chymerical* hopes of a *Crown*, as made him forget his Obedidence to his *Princes* will, and the poſitive command of his *Natural* Father; *Natural*, I ſay, becauſe in our *Laws* the *Maxim* is, *Qui ex damnato coitu naſcuntur, inter liberos non computantur*, i. e. Baſtards *are not counted amongſt* Sons, Coke 1 *Inſtit.* f. 3. or as *Littleton* ſays, *A* Baſtard *is quaſi nullius filius, becauſe he cannot be Heir to any*, apud Coke 2 *Inſtit.* §. 188. Now, if by Law this *Prince* can be Heir to none, what a madneſs it was to adviſe him to aſpire to *Three Hereditary Kingdoms*, or think to carry them tamely by *Popular Applauſe*, when nothing but the *Sword* can eſtabliſh a crack'd Title? *pag.* 27.

But the beſt people of England (ſays this non-ſenſical *Scribler*) *have no other way left to ſhew their Loyalty to the* King, *and love to their* Religion *and* Government, *in the long intervals of* Parliament, *than by* Proſecuting *His* Son, *for the ſake of the* King, *and* his own Merit, *with all the demonſtrations*

of the highest esteem, p. 28. They are certainly very hard put to it, if this (not to PROSECUTE his silly *Latinism*) be the only shift they can make to express their *Loyalty*, when Children can tell, they might, if they had any, better shew it, by prostrating themselves at *His Majesty*'s feet, and declaring their readiness to venture their Lives and Fortunes in defence of His *Sacred Person*, and the *Rights* of His *Crown*, against all the attempts of the *Popish Plotters* and *Whiggish Associators*. 'Tis true, some of the best People in *England* have had, for the King's sake, and in some measure for his own Merits, sufficient kindness for his *Grace*, and still wish him more *Grace* and consideration, than to continue obstinately disobedient, contrary to common *Prudence*, and to all the ties and obligations of *Nature*, of *Duty*, and of *Gratitude*: But as for Mr. *Hunt*'s *best People of* England, tho' pretended his *only Friends*, they have been upon all occasions his real *Enemies*, made a *Property* and a *Tool* of him, to set him up, like another *Perkin Warbeck*, in opposition to the *Royal Line*; and if that succeeded, to kick him down again, as they did *Richard Cromwell*, to make room for Themselves and their darling *Commonwealth*.

But to return from this digression, and examine what is left yet unanswer'd of this idle *Pamphlet*: I find our *Chief-Baron wou'd-be* has stumbl'd at last on those two famous *Statutes* of *Edward* III * to prove, that *Parliaments must be held once every year; which* (saith he) *is confirm'd by an Act of this King, call'd*, the Trienial Act, p. 21. But by his *Lordships* good leave, these *Statutes*, if well consider'd, will be found to have been made rather to oblige the *Commons* (who then grumbl'd no less at the frequent calling, than the *Factious* do now at the long intermission of *Parliaments*) to send their *Representatives* to the *King's Great Council*, than to bind the *King* to summon them when there was no occasion for their meeting; and therefore, to make the case more plain, the conditional Clause, **If need be**, which may aptly refer to the whole period, is expresly provided in the said *Statutes*. For to affirm, it was absolutely enacted, that a *Parliament* shou'd be held once every year, whether there was any, or no need of their meeting, when the choosing of Members was so troublesom, and their expences *eundo morando & ad propria redeundo* so chargeable to the people, besides the great Taxes they usually granted, is altogether unreasonable. As for the *Triennial Act* of this * *King*, it makes more against than for his *Lordships* design; since it requires but to have *a Parliament once in three years*, and not sooner, without some extraordinary occasion; which, I doubt not, but *His Majesty*, according to His late most Gracious *Declaration*, will see punctually observ'd, as He has been pleas'd to do in the whole course of His Reign.

* 4 *Ed.* 3. 14. 36 *Ed.* 3. 10.

* 16 *Car.* 2. 1.

And the Statute of Provisors, 25 *Ed* 3. is no less impertinent to his purpose; for tho' *it be the Right of the Crown of* England, *and that the Law of the said Realm is such, that upon the mischiefs and damages which happen to His Realm, the King ought, and is bound by Oath, with the accord of His People*

People in Parliament, to make remedy and Law, in removing the miſchiefs and damages which thereof enſue: Yet if His People in *Parliament* prove peeviſh and obſtinate, and will not accept of *His Majeſty's* gracious *Condeſcenſions*, nor of the expedients by Him propos'd; who then is to be blam'd, the *King* or His *People?* How many Propoſals and Overtures of accomodation have been made by His Majeſty to His laſt *Parliament* at *Weſtminſter?* and how undutifully they were rejected by ſome *Leading-Members* in the *Houſe of Commons?* How often did he offer to conſent to any reaſonable expedient they cou'd find out, for ſecuring the eſtabliſh'd *Religion*, in caſe of a *Popiſh Succeſſor?* But all was ſlighted, as if nothing but the Subverſion of the *Monarchy* was able to ſecure ſome *Gentlemen* in their *Religion*, that were ſhrewdly ſuſpected to have none to loſe:

This diſcourſe, I know, will not reliſh with our *Iriſh Chief-Baron*, who ſeems already very angry, that a *Cabal* (as he calls the *Loyal Addreſſers* of the Nation) *ſhou'd take upon themſelves to arraign the Proceedings of our lateſt Parliaments*, p. 8. And yet his unmannerly Worſhip, becauſe he thinks 'tis a *Priviledge* peculiar to the *Godly* to *ſpeak evil of Dignities*, ſcruples not to rail at the beſt *Parliament* that ever met in his time, which really was (what he ſcoffingly calls it) *a Parliament of famous Loyalty*; tho' in their latter days, when by the *Death* of ſeveral good *Members*, too many of the *old Leaven* had crept in, that vigor was much abated, which they always expreſs'd in their former reſolutions; and for which this *Factious Lawyer* preſumes to ſay, that *obliquely they gave the Papiſts many aſſiſtances*, p. 14. and in plain terms calls them, *the corrupt Villains of the late Long-Parliament. Conſiderations conſider'd.* p. 19. But to clear this point, without inſiſting upon retortions and recriminations; I ſay, to arraign the Proceedings of the *Parliament*, in its true and legal ſenſe, that is, of *King*, *Lords*, and *Commons*, is a very great and a very hainous Crime, not to be conniv'd at, or endur'd in any Subject whatſoever; becauſe it tends to the vilifying, and conſequently to the ſubverting the *Government*; for as *Seneca* well obſerv'd, *Nihil valet Regum poteſtas, niſi prius valeat authoritas:* If *Princes* loſe their Authority, the awe and reverence due to them from the People, they have loſt their Power and Command, and are in effect more than half Depos'd. But to arraign the Proceedings of the *Parliament*, when this Name is abuſively appropriated to the *Houſe of Commons*, to whom this lawleſs Scribler attributes *a high and uncontroulable Power*, (p. 9.) as if the *King* and *Lords* were only *Cypher's*, the Crime is not near ſo unpardonable as ſome people wou'd have us believe. I am ſure Mr. Juſtice *Hutton* in his Argument againſt Ship-money, (which ſo pleas'd even that *Rebellious Conventicle* of *Forty-One*, who ſwallow'd up the King's *Prerogative* and the Peoples *Liberties* in their *Parliament-Priviledges*, that they gave expreſs Orders to get it printed) thought it no ſuch Crime to ſay, *I know not whether the laſt meeting in Parliament, either by ill choice of the Members of the Houſe, or by the great encreaſe of the number, or by the ambitious humour of ſome Members of that*

House, who aim'd more at their own ends and designs, than the good of the Commonwealth, *things were so carry'd, not as was us'd in ancient times, but so disastrously, that it hath wrought such a distast of this course of Parliaments, as we and all that love the* Commonwealth *have just cause to be sorry for it.* p. 33. Nevertheless, I must confess, that even in this sense 'tis not becoming every private Pen to censure or condemn them, upon every slight occasion; and the motives must be very extraordinary, when such practices are allowable. Yet when we consider, that matters have been so carry'd on for some years past, that of necessity we must either mislike our *Princes* Wisdom and *Councils*, for Proroguing and Dissolving so many *Parliaments*; or conclude, as undoubtedly we must, that the unseasonable heat of the *Leading-Members* in the *House of Commons*, necessitated *His Majesty* to take such unwelcom resolutions: And withal, when we find, not only the *King*, but the generality of the *Nation* in their repeated *Addresses*, express their dislike to the Proceedings of a *prevailing Party* in that *House*; all *Loyal Subjects*, I think, concern'd in the election of such *Members*, ought to be so just to Themselves and the Publick as to declare their own Integrity, and their constant affection to the *King*, that the world may see they are no *Abettors* of the unwarrantable resolutions of their *Representatives*, who perhaps ran into such unusual extravagancies, in hopes to be seconded by their *Principals*. But tho' the occasion be never so extraordinary, it must nevertheless be granted for an undeniable *Maxim*, that whatsoever misdemeanors any *Members* of that *Honourable House* happen to commit, it ought not to reflect on the *House* in general, nor yet the errors of the whole *House* at any time, put either *Prince* or *People* out of love with that wholsom and excellent Constitution. For such is the instability of *Mundan* affairs, that (as the Poet said) *Nihil est ab omni parte beatum*; there is nothing upon Earth but hath its failings, and even the best of *Governments* has sometimes its own inconveniences: Thus *Princes* are now and then apt to give too much credit to their flattering *Favourites*, and be led for a while by their evil Counsels till time and experience convince them of their error; and 'tis plain, the wisest *Assembly* that ever sate in the *House of Commons* cannot be always free from the like mistakes, but are sometimes impos'd upon, by the plausible pretences of some designing *Politicians*, and cunningly decoy'd in, to act contrary to their inclination to their interest, and their duty. Of this kind we have several remarkable passages in the *Intestine Troubles* of *Forty-One*, where a few *Factious Members* in both Houses insensibly inveigl'd the rest, and inflam'd the whole Nation into a general combustion; And these four years past can sufficiently furnish us with fresh instances almost of the like nature, but that through the great Prudence of our *Sovereign* and His *Most Honourable House of Lords*, mindful of their Fathers miscarriages, all these endeavours prov'd abortive and unsuccessful.

If we seriously consider what measures some persons of greater parts than honesty made use of at that time, as well in as out of Parliament, we shall find cause

cause enough to admire how people that pretend so much Religion & *Loyalty*, so much affection to their *King* and *Country*, cou'd be wrought upon to run head-long into such extravagant courses, so destructive of the *Prerogative-Royal*, and of the *Peace* and *Settlement* of the *Three Kingdoms*. The horrid *Popish-Plot*, which has already cost us so many Millions in our Trade and Commerce, and, I am afraid, a great deal more in our Credit and Reputation abroad, was made a *stalking-horse* by the ambitious to attain to their expected Greatness, of being chief *Ministers*, if not chief *Magistrates* of all the K's *Dominions*: And because His Majesty, wisely considering it was impossible to make a just and impartial enquiry into that hellish *Conspiracy*, while the people were so far transported with heat and passion, * which nothing but time cou'd cure; and withal discovering what use some designing *Demagogues* intended to make of this *Plot* against the *Monarchy*, thought it convenient, or rather necessary, sometimes to Prorogue, sometimes to Dissolve his *Parliament*, and call another, in hopes to meet with one of a better temper, and more moderation; Our cunning *Machiavellians* took hold of this opportunity, to enflame the unthinking multitude, and make them believe their *All* was betray'd, without a speedy *Parliament*, to enquire into the *Popish-Plot*, and redress the Grievances of the Nation; and therefore they clamour'd, it was absolutely necessary they shou'd all joyn in a **Petition** to His Majesty for that purpose: whereby they were sure, either to gain their point, and get the *Parliament* to sit, which they might model and influence, as they pleas'd; or at least know the strength of their party by the number of *Subscribers*, and lessen His Majesty's credit in the hearts of his People. To this end *Agents* are sent about, and the *Petition* is sign'd by many *Legions* of the *Godly Party*. None so forward to subscribe this *Petition* to the **Son**, as they who petition'd for *Justice* against the **Father**. There you might see *Presbyterians*, *Independents*, *Quakers*, *Brownists*, and *Anabaptists*, all in a string, to petition His Majesty for a speedy *Parliament*. A *mysterious Riddle* to all sober and understanding men, that *Fanaticks*, who always but in *Forty-One* dreaded the face of that *August Assembly*, shou'd now be more *zealous* for their sitting, than the *True-Protestants* of the *Church of England*. It was certainly an *Omen* that cou'd portend no good either to *Church* or *State*; and therefore, as the *King* had reason to mistrust there lay a *Snake* in the *Grass*, the *Brethrens* zealous petitioning to that purpose, did rather hinder than forward their meeting.

* *Ne frena animo permitte calenti; da spacium, tenuemq; moram; male cuncta ministrat impetus.*

At last, when it could not be thought the effect of the *Fanaticks* importunity, but of His Majesty's grace and goodness, the *Parliament* met on the 23 of *Octob.* 1680, and the King having solemnly renew'd them His former promises of complying with any thing they cou'd in reason propose, desir'd them to wave all unseasonable disputes, and hasten to settle the affairs of the Nation, and bring their meeting to a happy conclusion. The *People* were generally

generally big with expectation, to see the issue of this famous *Session*, and doubted not but all their jealousies and distractions wou'd now be fully removed, the Three Nations settl'd and compos'd, and the *Popish Plot* speedily shifted to the bottom. *Parturiunt montes.*-They sate almost for three entire months without any lett or interruption: and what have they done all this while towards the effecting these weighty matters that lay before them? what great progress have they made towards the suppressing of *Popery*, or putting a period to that *hellish Conspiracy*? They spent nine or ten days about my Lord *Stafford*'s Tryal; and when all expected the other *Lords* shou'd immediately follow, our charitable *Patriots*, tender it seems of shedding more *Popish-Blood*, sate down to breath themselves, and not a word more of the *Papists* to the end of the Chapter.

The truth is, the *Leading-Members*, that govern'd all in the *House of Commons*, had other fish to fry. They were ferreting out *Papists in Masquerade*, or *half-reform'd Protestants*, now thought more dangerous than the profess'd *Romanists*. A *Reformation* they intended both in *Church* and *State*, and God knows where it shou'd have ended It was enough they fix'd the *Popish-Plot* by the conviction of my Lord *Stafford*; but it seems it was their interest to keep it on foot for other purposes, perhaps in imitation of the wise *Romans*; who thought it impolitick to demolish their great Rival *Carthage*, which, while standing, might serve to keep them from idleness and exercise their Valour. The *Papists* therefore must have a time to breath, and the *Fanaticks* are the great favourites of the *House*, while known *Protestants* of the Church of *England*, under the odious names of **Abhorrers**, are forc'd to bear the brunt, and suffer as *Betrayers of the peoples Rights and Liberties*, for obeying their *Sovereigns* Proclamation, tho' not repugnant to any known Law or Statute, but approv'd of by the *Judges*, and other *Sages* of the *Law*, and conformable to an expres *Act of Parliament* in the like case provided. 13 *Car.* 2. c. 5.

'Tis the peoples Right, I know, or to speak more properly, 'tis their Duty, to petition their *Prince* for relief and redress of their Grievances; but still 'tis the undoubted *Prerogative* of the *Sovereign* to judge whether such Grievances be real or pretended; fit to be granted, or necessary to be rejected: And when upon weighty considerations, as the Subject ought in duty to suppose, the *Prince* openly expresses his dislike to such *Petitions*, to importune him any further is very unmannerly, and plainly tending to *Sedition*. *'Tis an undutiful part in Subjects* (saith our *British Solomon*) *to press their King, wherein they know before-hand he will refuse them.* In his Speech to the Parliament. *anno* 1609.

The evil consequences of these *tumultuous Petitions* are too well known to those that remember our late unhappy Confusions, to be dwelt upon, or describ'd in so small a *Treatise*. 'Tis enough, that the wisdom of the Nation, both *King* and *Parliament*, after *His Majesty's* miraculous *Restauration*, have declar'd, *It hath been found by sad experience, that tumultuous and other*

ther diſorderly ſoliciting and procuring of hands by private perſons to Petitions, Complaints, Remonſtrances, Declarations, *and other* Addreſſes *to the* King, *or to both or either Houſes of* Parliament, *for alteration of matters eſtabliſh'd by Law, redreſs of pretended Grievances in* Church *or* State, *or other publick Concernments, have been made uſe of, to ſerve the ends of Factious and Seditious perſons gotten into power, to the violation of the publick Peace, and have been a great means of the late unhappy Wars, Confuſions and Calamities in this Nation.* 13 *Car.* 2. c. 5.

Beſides, our *Lawyers* tell us, and King *James* declares in his *Speech* to the *Parliament*, on the laſt of *March* 1607, * That *Rex eſt Lex loquens*; and *where the Law is ſilent, the King's will is a temporary Law.* Upon what account then were the *Abhorrers* of the late tumultuous *Petitions*, ſo exactly reſembling thoſe of *Forty*, and ſo contrary to *His Majeſty's* expreſs *Orders* and *Proclamation*, cenſur'd or impriſon'd? what Crime have they committed, or Law have they violated? or can there be any tranſgreſſion, where there is no Law; or Puniſhment, where there is no Tranſgreſſion? Oh! (ſay they) tho' there be no poſitive Law directly againſt *Abhorrers*, yet 'tis the great *Fundamental Law, Lex & conſuetudo Parliamenti*, and the Priviledge of *Parliament*, that they may judge what Crimes are puniſhable *ex poſt facto*, and by their arbitrary Power puniſh any man for what they pleaſe. This, I muſt confeſs, is a pretty knack to help us off at a dead lift, and will ſerve as well to vindicate the moſt exorbitant proceedings of a mad *Parliament*, as ſelf-preſervation is generally wreſted to juſtifie the horrid Conſpiracies of *Rebellious* Subjects. It proves the great Earl of *Strafford* has been lawfully Executed, tho' his very Enemies then gave us reaſon to believe, and both *King* and *Parliament* ſince have declar'd, him Innocent; And the known Laws of the Land are at this rate very defective, ſince they are not the entire Rule of the peoples *Civil Obedience*, but are further liable to be try'd by that *myſterious Riddle, Lex & conſuetudo Parliamenti*; which neither our Fathers, nor We, were able to underſtand.

* *You all know, that* Rex è Lex loquens; *and you often heard me ſay, that the King's will and intention being the* ſpeaking Law, *ought to be* Luce clarius. *And again; In any Caſe, wherein no poſitive Law is reſolute,* Rex è Judex; *for he is* Lex loquens, *and is to ſupply the Law, where the Law wants.*

'Tis an undoubted *Maxim* both in Law and Reaſon, that promulgation is abſolutely neceſſary to the obligation of all poſitive conſtitutions, inſomuch that the immediate Laws even of the Almighty, are not obligatory, where they were never preach'd, or made known. How then comes it to paſs, that ſo many Loyal Subjects and good Proteſtants have been troubl'd upon the account of thoſe myſtical Riddles, *Lex & conſuetudo Parliamenti*, and the *Priviledges of Parliament*, which were never publiſh'd or made known to the people, but lie dormant in the *Houſe of Commons*, till ſtarted up as occaſion requires? It were to be wiſh'd, that *Honourable Senate* won'd ſo far oblige the Nation, as to give them a true deſcription of this Law and

Cuſtom

Cuſtom of *Parliament*, and an exact account of their *Priviledges*; that people might in ſome meaſure for the future be able to ſhun thoſe dangerous rocks, and not be ſurpriz'd or ſhipwrack'd on ſuch hidden ſhelves. Till then all thoſe loud pretences of ſecuring the Subject from *Slavery* and *Arbitrary Government*, muſt ſeem very ridiculous to the ſober and judicious, who as they cannot be eaſily impos'd upon by outward appearances, to believe peoples words not ſuitable to their actions, will be apt to miſtruſt, that what theſe Gentlemen ſo ſtifly oppoſe in others, they deſign wholly for themſelves.

But to come cloſer to the purpoſe, let us ſuppoſe the *Parliament* has this Arbitrary *Prerogative*, to turn our moſt innocent actions into miſdemeanors, and make what they pleaſe a breach of Priviledge: yet by what Authority can the *Houſe* of *Commons* alone pretend to execute that Power; or take upon them to be ſole *Judges*, that cannot act as *Juſtices* of the *Peace*? Our *Anceſtors*, it ſeems, have brought their Hogs to a fair Market, who have ſtruggled for many Ages to preſerve themſelves and Poſterity from the unbounded rule of *Arbitrary* pleaſure, and having wreſted that Power from their *Soveraign*, like wiſe *Politicians*, have left it in the hands of their *Fellow-Subjects*, nay, of their *Attorneys* and *Servants*, to whom as ſuch, they always allow'd their daily wages for their attendance in *Parliament*. 'Tis certainly an odd kind of *Liberty*, that the people can neither be Fin'd nor Impriſon'd by their *Soveraign*, unleſs for tranſgreſſing ſome known penal *Law* of the Land; but their *Deputies* and *Truſtees* may uncontroulably puniſh them for any thing they are pleas'd to call *Criminal*.

Is this the great happineſs of *Freeborn* Subjects, inſtead of one to have five hundred *Maſters*, and ſee the *Fundamental Laws* of the Nation, *Magna Charta*, and all the good *Statutes* confirming and explaining the ſame, thus eluded and made uſeleſs by a pretended *Cuſtom* of *Parliament*? What are we the better at this rate, that by the *Great Charter* of the *Liberties* of *England*, c. 29 'tis declar'd, *That no Freeman ſhall be taken or Impriſon'd, or be diſſeiz'd of his Freehold or Liberties, or his Free Cuſtoms, or be Outlaw'd, or Exil'd, or in any manner deſtroy'd, but by the lawful Judgement of his Peers, or by the Law of the Land*? Or that 28 Edw. 3. c 3. 'tis enacted, *That no man of what eſtate or condition he be, ſhall be put out of his Land or Tenements, nor taken, nor Impriſon'd, nor diſinherited, nor put to death, without being brought to Anſwer by due Proceſs of Law.* Or, to omit many others, that 42 Ed. 3. c. 3. *It is aſſented and accorded for the good governance of the Commons, that no man be put to anſwer without Preſentment before Juſtices, or matter of Record, or by due Proceſs and Writ Original, according to the Old Law of the Land; and if any thing be done to the contrary, it ſhall be void in Law, and holden for error.* What are we the better, I ſay, to have theſe and ſeveral other *Statutes* to the ſame purpoſe, if they are not of force to ſecure us on all ſides from the *ſlaviſh yoke* of *Arbitrary* Power? If a breach be once made in theſe great *Bulwarks* of our *Liberties*, and that even by thoſe

thoſe *Sentinels* appointed to guard us from all Illegal *Incroachments*, where is our *Security*? What will it avail the flock, that they are ſafe from *Wolves*, if they are in danger to be devour'd by the very *Dogs* that ſhou'd defend them? Or to what purpoſe ſhou'd people ſtruggle to avoid *Scylla*, if at the ſame time they ſuffer themſelves to be ſwallow'd up in *Charybdis*? 'Tis an old ſaying, *Infeliciter ægrotat, cui plus mali venit a medico quam a morbo*; and we have found this too true by a dear-bought experience. God preſerve us from receiving any further confirmations of it from thoſe *State-Empyricks*, that labour to make us exchange the reality for the name, and the ſubſtance for the ſhadow, of *Liberty*.

'Tis plain by the foregoing *Statutes*, that no man ought to be taken or Impriſon'd, without being brought to Anſwer by due courſe of Law; and that none can be brought thus to anſwer, without Preſentment before Juſtices, or matter of *Record*, or by due Proceſs and *Writ Original*, according to the old *Law* of the Land. What pretence then have the *Houſe* of *Commons*, who can bring none to Anſwer in this manner, to any right or legal power to take or Impriſon any *Criminal* whatſoever? 'Tis true, the *Commons*, and generally all men in Authority, are inclin'd to enlarge their own Juriſdiction, and ſtretch it as far as poſſible; but ſure a bare Vote of that *Houſe* in favour of themſelves, or a late practice never heard of in former Ages, ſhall not be of force enough in any *Court* of *Juſtice* to elude the ſolemn *Acts* of [illegible]*ing* and *Parliament*.

Beſides theſe *Statutes*, too plain to admit of any comment, even by the Common Law of this Realm no Subject can Impriſon another, but our Ancient *Courts* of *Record*, and ſuch as have the *Kings* expreſs *Commiſſion* for ſo doing. I ſay, *Courts* of *Record*, becauſe (as appears by divers adjudg'd Caſes in our Law-Reports) no other *Court* can Fine or Impriſon the Subject: *Courts* (ſaith *Coke*) *which are not of Record, cannot impoſe a Fine, or commit any to Priſon*, lib. 8. f. 38. And again, *Nulla Curia, qua Recordum non habet, poteſt imponere finem, neque aliquem mandare carceri; quia iſta tantummodo ſpectant ad Curias de* * *Recordo*. Now our beſt *Lawyers* will tell us, that the *Houſe* of *Commons* is no *Court* of *Record*, nay, properly ſpeaking is no *Court* at all. 1. Becauſe there is no *Court*, but what is eſtabliſh'd by the *Kings Patent*, by *Act* of *Parliament*, or by the *Common-Law*, *i. e.* the conſtant immemorial cuſtom of former Ages. *Plowdens* Comment. fol. 319. and *Coke* 1 Inſtit. f. 260. But the *Houſe* of *Commons* cannot pretend to have any *Patent* or *Act* of *Parliament* to be a *Court*, and yet the *Common-Law* makes nothing for their purpoſe: For they were never own'd as ſuch, nor ever had as much as a *Journal-Book*, much leſs *Records*, till *Ed.* 6's. time: And moreover, it was never heard before Sir *Edward Cokes* fancy, there were two diſtinct *Courts* in the ſame *Parliament*; ſince therefore the *Houſe* of *Lords* is undoubtedly the *Supream Court* of all *England*, they are proper-

* Ib. f. 60. Beechers *Caſe. The like he hath* fol. 120. Bonham's *Caſe*, and lib. 11. f. 43. Godfrey's *Caſe*, *and in ſeveral other places.*

ly the *High Court* of *Parliament*, and consequently the *House* of *Commons* is no Court in Law. Secondly, There is no *Court* without a power of Tryal; but the *House* of *Commons* have no power to try any Crime or Offence; for they cannot, nor ever pretended to examine upon Oath: And therefore since there can be no legal tryal without Witnesses, nor are Witnesses of any force in Law, unless examin'd upon Oath, the *House* of *Commons* not claiming the power to administer Oaths, cannot bring any matter to a Tryal, and consequently can be no *Court*. I must confess Sir *Edward Coke* (who in his latter days thinking himself disoblig'd, was no friend to the *Monarchy*, and therefore took a great deal of pains to extol the *Power* of the *Commons*, in opposition to the *Kings Prerogative* and the *Jurisdiction* of the *Lords*) is, or at least pretends to be, of another opinion. In the 4*th*. part of his *Institutes* he tells us, *That the* House *of* Commons *is to many purposes a distinct Court*, p. 28. which he very Learnedly proves by this rare *Demonstration*, *That upon signification of the Kings pleasure to the Speaker, they do and may Prorogue or Adjourn themselves, and are not Prorogu'd or Adjourned by the* House *of* Lords, ib. Whereas (to say nothing of *Commissioners* for examining Witnesses, or regulating any publick business, of *Arbitrators*, *Referees* and the like) every *Committee* of Lords and Commons, tho never so few in number, must upon this account be a distinct *Court*, because they may thus Adjourn and Prorogue themselves, without their respective Houses. But he goes on, and to prove the *House* of *Commons*, is not only a Court, but a Court of Judicature and Record, he says p. 23. *That the Clerks Book of the* House *of* Commons *is a Record, and so declared by Act of Parliament*, 6 H. 8. *c*. 16. Whereas that *House*, as I have already hinted, had no such Book as a *Journal*, much less any *Authentick Record*, before the first year of *Edward* the sixth; all their material Proceedings till then being drawn in Minutes by a *Clerk* appointed to attend them for that purpose, and by him entr'd of *Record* in the *House* of *Lords*: And therefore the words of the *Statute* are, *That the Speakers License for Members going into the Country, be entred of Record in the Book of the Clerk of the Parliament, appointed for the Commons House*: Which undoubtedly must be meant, not of the Commons, tho order'd now and then to wait upon them, but of the Lords *Clerk*, who alone is stil'd *Clerk* of the *Parliament*. I omit, that altho the *Act* had expresly call'd the *Commons Book*, a *Record*, yet this cou'd no more make it so, than the words of the *Common-Law*, *Recordari facias loquelam in Curia Comitatus* vel *Baronis tui* —— *& Recordum illud habere coram Justiciariis nostris*, &c. us'd in the *Writt* for removing a Plaint out of the *Court-Baron*, or *County-Court* to the *Common-Pleas*, can prove the *County-Court* and *Court-Baron*, to be *Courts* of *Record*; which yet *Coke* himself denyes in several places of his *Institutes*. See 1 *Inst*. f. 117. and 260. and *Rolls* in his *Abridg*. f. 527.

This is not all, the *Lords* and *Commons* must be made all Fellows at Foot-ball, and of equal Authority, in point of *Judicature*: *The Lords* (saith he)

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in their Houſe have Power of Judicature, and the Commons in their Houſe have Power of Judicature, and both together have Power of Judicature, p. 23. But I wiſh, ſince the *Lords Judicial* Power, as well with as without the *Commons*, is beyond all diſpute, this great *Lawyer* had ſo far oblig'd Poſterity, as to have left us ſome convincing Argument to make the World believe the like of the *Houſe* of *Commons*; or at leaſt given us ſome *Inſtances* of their uſing this Power in former Ages, as the *Lords* have done time out of mind. In the mean time, 'tis a ſhrewd Argument againſt his Aſſertion, that in *H.* 4. time the *Commons* themſelves in their *Petition* to the *King*, declar'd, *That the Judgments of Parliament appertained only to the King and Lords, and not to the Commons; and therefore they prayed the King out of his ſpecial Grace to ſhew unto them the ſaid Judgments and the cauſe of them; that ſo no Record might be made in Parliament againſt the ſaid Commons, without their privity.* To which the Biſhop of *Canterbury* anſwer'd by the Kings command, *That the Commons are Petitioners and Demanders, and that the King and Lords always had, and of right ſhall have the Judgments in Parliament, even as the Commons themſelves have ſhewed; ſaving that in Statutes to be made, or Grants and Subſidies, or ſuch things as are to be done for the publick profit of the Realm, the King will have eſpecially their advice and aſſent,* 1 H. 4. Rol. Parl. n. 79. Who now is to be believ'd, Sir *Edward Coke* attributing to the *Commons*, or the *Commons* themſelves wholly diſclaiming all Power of *Judicature*? Or ſhall a ſingle *Lawyers Ipſe dixit*, or proofleſs aſſertion, be of greater weight, than ſo ſolemn a *Declaration* upon *Record*, approv'd off by *King*, *Lords*, and *Commons*?

But to be ſhort, and to argue *ad hominem* againſt our late *Demagogues* at *Weſtminſter*, if they thought themſelves a Court of *Judicature* and *Record*, as Sir *Edward Coke* is pleas'd to make them, 'tis ſtrange what cou'd be their motive (unleſs to ſhew their Arbitrary Power to the World) to Impriſon ſo many of His Majeſties *Loyal* Subjects, and after a long and chargeable Confinement, releaſe them, without offering to bring them to any legal Tryal: For if theſe Gentlemen were reputed Criminal, they ought to have been try'd according to Law; if Innocent, they ſhou'd not have been Impriſon'd. And to ſay their Confinement was by the *Houſe* deſign'd for a puniſhment of their ſuppos'd Miſdemeanors, 'tis contrary to common ſenſe and to all Laws both humane and divine. For at this rate, people will be condemn'd before they are heard, and puniſh'd before they are convicted; nay, which is worſe than *Abington-Law*, to hang a man firſt, and try him after, they ſhall be puniſh'd at will, and never brought to a tryal. What can be ſafe, if this be admitted? or who can be ſecure either of Life or Liberty, if a prevailing Faction in the *Houſe of Commons* may toſs him thus in a *Blanket* without any Rhime or Reaſon, contrary to the undoubted *Right* of the *Subject*, and the *Fundamental Laws* of the *Nation*?

But we are told, the *Commons* have often Impriſon'd people for miſdemeanors, and releas'd them again at their own Diſcretion. I wiſh they

had shew'd us withal by what *Authority* or *Law* they committed them; for a *facto ad jus* is no good argument with any man of sense or judgment. How many *Appeals* have been made to *Rome*, and provisions of Benefices procur'd from thence, during the *Papal* Usurpation? Yet these being contrary to Law, the Authors were still punishable, and it was no excuse for any, that others had done the like before. The *Commons* have been a constituent part of the *Great Council* of the *Kingdom*, either since the *16th.* of *Henry* I. as some *Historians* write, or since the *49th.* of *H.* 3 in the year 1264. as most Authors agree; and yet all this while we cannot find, that by their own *Authority* they imprison'd any *Criminal*, till in the *4th.* of *Ed.* 6. about the year 1550 they committed *Criketoft* to the *Tower*, when the *King* was an Infant, and all govern'd by the ambitious *Duke* of *Somerset*: who to be sure wou'd not expostulate with the *House of Commons* about such a trifle, as he thought it, whilst they forbore to question him for his more illegal and arbitrary Proceedings.

Now, if there be no other argument to justifie the *Commons* imprisoning Delinquents, but the practice of their House since the *4th.* of *Ed.* 6. 'tis plain, the commitment of *Criketoft* was illegal, because not justifiable by any former practice of that *House*; and consequently, cou'd be no fit Precedent to be imitated in succeeding Parliaments. And if their first *Essays* of this kind were unwarrantable by Law, their subsequent Commitments cou'd be no better; for, *Quod ab initio non valuit, tractu temporis non convalescit.* To what purpose then are such unwarrantable Examples alledg'd to justifie the late proceedings of the *Commons*, if not to prove one absurdity by another? since they can hardly think of any thing, how wild and unreasonable soever, but they may find one instance or another, to offer as a Precedent, in some of our former *Parliaments*. For experience tells us, this *Great Council*, much less the * meanest of the three Estates, (tho' our modern *Republicans* wou'd fain snatch the great *Priviledge* of *Infallibility* from the *Pope's Cushion*, and place it in the *Speakers Chair*) has not been always free from mistakes, but is found to have often deviated from Justice, Truth, and Loyalty. We must therefore, with *Seneca*, look, *non quâ itur, sed quâ eundum*, not what is, but what ought to be done; and consider, that 'tis not the example of frail men, impos'd upon through ignorance, or led by passion, or private interest, but the approv'd Laws of the Land, ought to be the *Rule* both of the *Magistrates* Government, and of the *Subjects* Obedience.

* Dyer *f.* 60. *a.* says, the Parliament consists of three parts, *viz.* the KING, as *chief Head*; the LORDS, the *chief and principal Members of the Body*; and the COMMONS, the *inferiour Members.*

What! says a factious *Petitioner*, cannot the House of *Commons* imprison any Criminal? Have they no authority to chastise their own *Members*, or punish the *Invaders* of their *Priviledges*? Have they not often exercis'd this Power; and is it possible the *King* and *Lords* wou'd have so long conniv'd at their proceedings, had they been illegal or unjust? Does not the House

House of *Peers* punish the *Breakers* of their *Priviledges*; why then may not the House of *Commons* be allow'd to do the like?

These are the mighty arguments our great *Champions* for the House of *Commons* always insist upon; but how weak and insignificant they are, is very obvious to any, tho' but meanly vers'd in our *Laws*, and the constitution of our *Government*. For my part, I have always been, and still am, as much for maintaining the just *Priviledges* of that *House*, as any man whatsoever; 'tis my interest to do it, and nothing but Truth and Loyalty shall ever induce me to speak against any of their *Pretensions*: yet I must say, the power they claim now-a-days, to punish all sorts of misdemeanors, and what they please to term a *breach of Priviledge*, is not to be endur'd by any free-born Subject; For, besides that 'tis needless, because such offences may, and by Law ought to be try'd in the ordinary *Courts* of *Justice*, 'tis very dangerous to the *Publick*, least the *Grand Inquest* of the Nation, appointed to represent the Peoples *Grievances*, and pray redress, shou'd upon this account be diverted from pursuing those weighty affairs, by every sawcy Footman belonging to the meanest *Burgess* in their House.

I confess, it were somewhat tolerable in the *Commons* to imprison and punish their own *Members*, for words by them spoken, or misdemeanors committed in the House: 1. Because by 4 *H.* 8 c. 8. they are not punishable elsewhere for any rashness in *Parliament*, that does not amount to Treason Felony, or breach of the Peace, which the *Commons* neither * can, nor I hope will, as in *Forty-One*, endeavour to protect. 2*ly*. Because 'tis suppos'd, the Members upon their entring into that Assembly, unanimously agreed the lesser number shou'd always submit to the greater, and the *major Vote* be observ'd as the Act and Sense of the whole House; if therefore by consent and original compact every single *Member* submits himself to the rest, he cannot complain, tho' otherwise they had no authority, if they imprison him for his misdemeanors, because *scienti & volenti non fit injuria*, provided always they exceed not the common Rules of *Justice*, nor the bounds of our establish'd Laws; for then no private Act can bind a Subject, tho' made with his own free consent; as appears by *Clark*'s Case against the Mayor and Burgesses of St. *Albans*; *Coke* lib. 5. p. 64. I cannot therefore but think the power assum'd of late years by the House of *Commons* over their *fellow-Members*, to expel them the House, when and for what they please, without any legal Tryal, (which the *Lords* never practic'd against any of their *Peers*) is in it self most unreasonable, and of very dangerous consequence; as Mr. *Prynne*, tho' otherwise a great *Champion* for the *Priviledges* of *Parliament*, proves at large in divers of his Treatises. *The practice* (saith he) *of sequestring and expelling* Commons *by their* fellow-Commons *only, is a late, dangerous*, unparliamentary Usurpation, *unknown to our Ancestors, destructive to the* Priviledges *and* Freedom *of* Parliaments, *and injurious to those* Counties, Cities, *and* Boroughs, *whose* Trustees *are secluded: the* House of Commons *being no* Court of Justice, *to*

* Coke 4 *Inst.* p. 25. & 31 *H.* 6. n. 26, 27.

give

give either Oath *or* final Sentence, *and having no more authority to dismember their* fellow-Members, *than any* Judges, Justices of the Peace, *or* Committees, *have to* Dis-judge, Dis-justice, *or* Dis-committee *their* fellow-Judges, Justices, *or* Committee-men, *being all of equal Authority, and made* Members *only by the* King's Writ, *and the* Peoples Election, *not by the* Houses, *or other* Members Votes; *who yet now presume both to* make *and* unmake, seclude *and* recal, expel *and* restore *their* fellow-Members *at their pleasure, contrary to the practice and resolution of former Ages, to patch up a* Factious Conventicle, *instead of an* English Parliament. In his *legal Vindication of the Liberties of* England, p. 10.

But whatever Power the *Commons* can pretend to have over their own *Members*, to say they can lawfully punish others, tho for a breach of *Priviledge*, much less for any other Crime, seems to me a very groundless Assertion, not warrantable by the *Ancient Law* and *Custom of Parliament*, but rather contrary to the *Fundamental Constitutions* of our *Government*: First, because 'tis impossible to make out from whom this Power is deriv'd; From the *King*? The *Factious* will not own it, and none can prove it: For they have neither *Patent* nor *Statute* to shew for't, nor yet any *Legal Prescription*, which is a constant immemorial Custom, such as the *Lords* have in point of *Judicature*, to warrant it; the Ancientest President they can alledge, being that of 4 *Ed.* 6. or the Case of *Ferrers* referr'd to them by the *Lords* in the 34 *H.* 8 about sevenscore years ago. Do they derive it then from the *People*, from the *Freeholders* and *Freemen*, their *Electors*? These have no such Power of themselves, they can Imprison none without His *Majesties Commission*; and what they have not, sure they cannot give: *Nemo dat, quod non habet.* As for the Power given by the *Electors* to their chosen *Members*, who are order'd by the *Writ* of *Summons* to have from the persons they represent, *Plenam & Sufficientem potestatem*, 'tis no *Judicial* Power, nor *Political* Jurisdiction, which the People have not, and consequently cannot give, but only a Power of consenting as well for their *Principals*, as for themselves, to the *Kings Laws and Ordinances*. And certainly, if the *King be the Suprem, and the only Suprem Governour of this Realm*, as we affirm in the *Oath* of *Supremacy*; and if *all Authority and Jurisdiction Spiritual and Temporal be derived and deducted from the Kings Majesty*, as 'tis expresly declar'd 1 *Ed.* 6. *c.* 2. § 3. Or as Old *Bracton* saith, *Ea quæ sunt Jurisdictionis & pacis, ad nullum pertinent nisi ad regiam dignitatem. lib.* 3. *c.* 24. Unless the *Commons* can make out they have their Power from the *King*, they can have no manner of Jurisdicton, and by consequente cannot lawfully Punish or Imprison any Criminal, if not perchance their own *Members* in the Cases aforesaid: Besides, in the first *Parliament* of Queen *Mary* 'tis declar'd, *That the most Ancient Statutes of this Kingdom do give, assign, and appoint the correction and punishment of all Offenders against the Regality and Dignity of the Crown, and the Laws of this Realm, unto the King* 1 Mar. Sess 3. c. What then are the breakers of the *Commons Priviledges*;

ledges; are they *Offenders* againſt the *Dignity* of the *Crown*, or the Laws of the *Realm*? If ſo, they ought according to this Act to be puniſh'd by the *King*; if not, they are not puniſhable at all: for to trouble any, that does not offend againſt the *Crown*, or the *Law* of the Land, is very *Illegal and Arbitrary, and a high breach of the Liberty of the Subject.*

Secondly, becauſe the *Law* has expreſly provided where and how breaches of *Priviledge* ought to be puniſh'd, and gives the *Houſe* of *Commons* no power to take any cognizance of them; for by ſeveral *Statutes* it appears, that *if a Parliament-man, or his Menial-ſervant, be Aſſaulted, Beaten or Wounded, in Parliament-time, Proclamation ſhall be made where the deed is done, that the Offendor ſhall render himſelf to the* Kings-Bench *within half a year after, there to be tryed; and if the Offendor will not appear, he ſhall be Attainted of the Deed, and pay to the Party griev'd his double Damages, to be tax'd by the diſcretion of the Judges of the ſaid Bench for the time being, or by Inqueſt, if need be, and alſo make Fine and Ranſom at the Kings will. Moreover, it is accorded in the ſame Parliament, that likewiſe it be done in time to come in like Caſe*, 5 H. 4. c. 6. and 11 H. 6. c. 11.

As for the *Commons* freedom from *Arreſts*, 'tis certainly a very Ancient *Priviledge*, granted by our *Kings* to that *Houſe*, the better to enable them to attend the *publick* ſervice, to which they were ſummon'd; as appears by *Edward* the firſt's Anſwer to the *Templars*, who having ſome *Tenants* in the *Parliament*, that were behind with their Rents, Petition'd the *King* to have leave to Diſtrain for the ſaid Arrears in *Parliament-time*; which he utterly refus'd, ſaying, *Non videtur honeſtum quod Rex concedat quod illi de Conſilio ſuo diſtringantur tempore Parliamenti.* 18 Ed. 1. Rot. 7. in Theſaur. Receptoris Scaccar. Yet that it was not formerly held ſo ſacred, nor did extend near ſo far, as ſome people now imagine, is plain from the Caſe of *Thorpe* 31 *H.* 6. Who, tho *Speaker* of the *Houſe* of *Commons* at that time, was Impriſon'd in the *Fleet* during the Prorogation of the *Parliament*, for a 1000. Marks Damages given againſt him for a Treſpaſs done to the Duke of *York*. And the *Parliament* being Re-aſſembled, the *Commons* earneſtly deſir'd to have their *Speaker* diſcharg'd, but it was adjudg'd by the *Lords*, that he ſhou'd remain in Priſon according to his Sentence, and they chooſe another *Speaker*: whereupon they elected Sir *Thomas Charlton*, and made no further clamours, as ſome now wou'd do, that their *Priviledges* were invaded, 31 *H.* 6 *Rot. Parliam. n.* 25, 26, *&c. Seldens Baronage fol.* 115.

Now for the Tryal of a breach of this *Priviledge*, tho I find no poſitive or expreſs *Statute*, that orders it to be decided in the ordinary *Courts* of *Juſtice*, yet that they may lawfully do it, is a plain conſequence of the foregoing *Acts* of *Parliament*: For to argue a *majori ad minus*, ſince *Aſſaults* upon *Parliament-men* are far more Criminal than *Arreſts*, if the ordinary *Courts* of Juſtice can try the greater, they may certainly try the leſſer Crime. And accordingly they have often taken cognizance as well of this as other Priviledges of Parliament; as appears in the Caſe of *Dono* againſt

Welſh,

* *Mich.* 12 *Ed.* 4. *Rot.* 20. in the *Exchequer.*
* *Hill.* 14 *E.* 4. *Rot.* 7.
* *Dyer* fol. 59.

* *Welsh*, and of * *River* against *Cosyn*, * *Skewish* against *Trewynnard*, and many others. But the most usual practice of former times was, to make application to the *King* and *Lords* for redress in this particular, for as Sir *Eaward Coke* himself confesses, *The determination and knowledge of this Priviledge belongs to the Lords of Parliament*, in his *select Cases* 63. And therefore the *House* of *Commons*, upon the restraint of any of their Members or Menial Servants, of which themselves took no cognizance till of very late days, always made their humble request to the *King* and *Lords* for his enlargement. Thus when *William Lake* Servant to *William Mildred*, a *Member* of the *House*, was taken in Execution of Debt, and Committed to the *Fleet*, the **Commons* Petition'd the King and Lords for his Liberty. The like they did in *Walter* **Clarks* Case; and in the Case of *William* * *Hide*: And to omit several other *Precedents*, even in the 43 *Eliz.* when a Bill was preferr'd in the *Star-Chamber* against *Belgrave* a *Member* of that *House*, the *Parliament* then sitting, for Misdemeanors by him committed against the Earl of *Huntington*; the *Commons* well knowing they had no Authority of themselves to protect their Member, made their earnest, but ineffectual, Application to the *Lords* for relief. Sir *Simon D'Ewes* Journals *p.* 612 And in the same Parliament a great asserter of *Priviledges*, upon a debate about *Subpœna's*, said openly in the House, *Our use at this day is not warranted by Ancient course of Precedents; for if a man had been Arrested upon a Subpœna, upon notice given, he shou'd have had a Writ of Priviledge, which of course Her Majesty must have allow'd*: *D'ewes* Journals *pag.* 655. which is conformable to the Report made 18 *Eliz.* by Mr. *Attourney* of the *Dutchy* upon a *Committee* appointed for setting Mr. *Halls* man at Liberty; *That the Committee found no Precedent for setting at large by the Mace any person in Arrest, but only by* * *Writ*; *and that by divers Precedents of Records perus'd by the said Committee, it appeareth that every Knight, Citizen or Burgess, which doth require Priviledge, hath us'd in that Case to take a Corporal Oath before the* Lord Chancellor *or* Lord Keeper, *that the Party for whom such Writ is pray'd, came up with him, and was his Servant at the time of the Arrest made*, D'ewes *p.* 249.

* 8 *H.* 6. *Rot. Parl. n.* 57.
* 39 *H.* 6. *n.* 9.
* 14 *Ed.* 4. *n.* 55.

* *The Lords themselves cannot by Priviledge of Parliament set any at Liberty by their immediate Orders to the Gentleman Usher, or Serjeant at Arms, but only by a Writ of Priviledge from the Lord* Keeper; *as appears* 43 Elizab. D'ewes *Journals*, p. 608.

The famous Case of *Herrers*, *Burgess* of *Plimouth* 34 *H.* 8. tho often alleadg'd in favour of the *Commons*, is so far from making any thing for their purpose, that it plainly shews they never offer'd till then to punish any breach of *Priviledge*; for altho they found, not only that the *Sheriffs* of *London* deny'd to deliver their *Burgess*, but that the *Officers* of the *Counter* beat their *Serjeant* and broke his *Mace*; yet knowing they had no coactive Power of themselves, they were forc'd to repair to the upper *House*, (which

(which they wou'd never have done, had their own Authority been ſufficient) and complain to the *Lords* of the injury they receiv'd; who judging the *contempt* to be very high, for the *Commons* greater ſatisfaction referr'd the puniſhment thereof wholly to themſelves: which condeſcenſion, it ſeems, gave ſuch encouragement to that *Houſe*, in ſucceeding *Parliaments*, who have been always ſure never to looſe, but ſtill to gain ground upon the *Prerogative* and the *Houſe* of *Peers*, that now and then they made bold, even without any Warrant or direction from the *Lords*, to puniſh ſome breaches of *Priviledge*, and at laſt other miſdemeanors. For King *Edward* the ſixth, becauſe of his Minority, and his two Siſters by reaſon of their Sex, being not ſo active, nor ſo fit for buſineſs, as their Predeceſſors, the *Commons* took hold on this opportunity to get themſelves into Power, and endeavour'd by puniſhing Offenders to render themſelves the more formidable to the People.

From hence they proceeded to regulate *Elections*, and tho the *Law* is very plain and poſitive in this Caſe alſo; yet the *Commons* have taken upon them of late days, not only to decide who is duely choſen, and who unduly return'd; but have further aſſum'd the Power to puniſh the *Offenders*, contrary to divers *Acts* of *Parliament* in that Caſe provided: For by ſeveral *Statutes* it appears, *That if the* Sheriff *makes an undue Return, his puniſhment is* 200 l. *one to the King, and the other to the party duely Elected; beſides a years Impriſonment without Bail or Mainpriſe: And the perſon unduely return'd is to continue a Member of the Houſe, but at his own Charges, without any allowance from the place, for which he ſerves.* As for the return, if any makes complaint thereof, *It ought to be tryed, not by a Committee of Elections, but before the Juſtices of Aſſizes in the proper County, or by Action of Debt in any Court of Record*; as appears 11 *H.* 4. *c.* 1. and 8 *H.* 6. *c.* 7. and 23 *H.* 6. *c.* 15. Theſe are the *Laws* for regulating *Elections*, and purſuant to them Queen *Elizabeth*, in whoſe time the *Commons* buſi'd themſelves too much in that matter, ſent a notable check to the *Houſe* in the 28 year of her *Reign*, for their medling with chooſing and returning *Knights* of the Shire for *Norfolk*; *a thing* (ſaid ſhe) *impertinent for the Houſe to deal withall, and only belonging to the Office and charge of the Lord Chancellor, from whom the Writs Iſſue and are return'd*, D'ewes Journal, *p.* 393. Which *Meſſage* wrought then ſo far upon the *Houſe*, that for ſome years after they forbore to medle much in any thing of that nature, but apply'd themſelves, when occaſion requir'd, to the *Lord Chancellor* or *Keeper*, who proceeded therein as the *Law* directed, without taking any great notice of the *Commons Votes* or *Reſolves*; as we find by a remarkable Inſtance in the 35 of this *Queen*, when Sir *Edward Coke* then *Speaker*, was order'd by the *Houſe* to attend upon my *Lord Keeper*, to move his *Lordſhip* to direct a New *Writ* for chooſing a *Burgeſs* for *Southwark* inſtead of *Richard Hutton*, ſuppos'd to have been unduly elected; and another for allowing Sir *George Carew*, who was duely elected, but not return'd, to be *Burgeſs* for *Camelsford* in *Cornwall*; and a

third for changing the name of *John Dudley*, return'd *Burgeſs* for *New-Town* in the *County* of *Southampton*, into the Name of *Thomas Dudley*, alleadg'd to be the ſame perſon, but his Name miſtaken: *My Lord Keeper* anſwer'd, that the *Returns* for *Southwark* and *Camelsford* ſhou'd ſtand good, but as for the ſaid *John Dudley*, he wou'd direct a new *Writ* for chooſing another *Burgeſs* in his ſtead for *Newtown*, *D'ewes* Journals, *p.* 494. Now if this was the legal way of Proceeding in Queen *Elizabeth's Reign*, warranted by the *Statutes* lately quoted, and allow'd by the great *Lawyer* Sir *Edward Coke*, and the whole *Houſe* of *Commons* at that time, by what *Authority* cou'd it be alter'd in ſucceeding *Parliaments*? or is it juſt that the Ancient *Precedents* of former Ages ſhou'd be avoided by unwarrantable new-ones of later times? Without queſtion, had the *Houſe* of *Commons* then known, they had any Power to mend the ſaid *Returns*, or puniſh the *Offendors*, they wou'd never have ſent their *Speaker* to wait on the *Lord Keeper's* pleaſure about it; and if that Houſe had no ſuch *Authority*, 'tis ſtrange how can their *Succeſſors* pretend to have any.

Thus we ſee the *Houſe* of *Commons* was not in former times allow'd to regulate the *Election* of their own *Members*, nor to Impriſon any for undue Elections or Returns, nor yet for a breach of *Priviledge*, much leſs for any other Crime or Miſdemeanor. Nothing was heard in thoſe better days of that terrible Sentence, *Take him* Topham; not a word of the Subjects Impriſoment *during the Will and Pleaſure of the Houſe of Commons*. The ſitting of *Parliaments* then was * ſhort and ſweet, diſpatching more buſineſs in three days, than of late they have done in ſo many months. Their Study was, to Redreſs, not Create Grievances, and preſerve or procure a good underſtanding betwixt the *King* and His *People*; and not like *Banbury-Tinkers*, inſtead of mending one hole, make a great many.

* *See* Prynn's *Remarks on* Coke's 4 *Inſt. p.* 42.

Oh! but (ſay ſome) the *Connivance* of *King* and *Lords* is a ſtrong Argument that the *Commons* have done nothing herein contrary to Law. I Anſwer, 'tis rather a very weak and frivolous Plea; firſt, becauſe tho the *King* be oblig'd by His *Coronation-Oath* to govern by Law, yet all knowing men will allow He has a *Prudential* Power to ſuſpend the *Execution* of ſuch *Laws*, as he thinks prejudicial to the *publick* Intereſt; and conſequently may, when he ſees occaſion, wink at ſome illegal attempts of His Subjects, to avoid a greater Inconvenience. If thefore of late times the *King*, and if you will, the *Houſe* of *Lords*, did connive at ſome unwarrantable reſolutions of the *Commons*, rather than exaſperate the whole *Houſe*, too Jealous of their own *Priviledges*, and thereby fruſtrate the chief end of Calling His *Parliament*, the Security of the *Publick*; it was Policy and great Prudence to wave it at that time, tho now 'tis the height of Folly to make this a warrant for doing the like again, contrary to ſo many legal *Preſidents*, and expreſs *Acts* of *Parliament*. Secondly, becauſe the gathering of *Peter-pence* in this *Kingdom*, has been conniv'd at by *King*, *Lords*

Lords and *Commons*, for divers *Centuries* of years; yet it was an *Illegal Tax* upon the Subject, contrary to *Magna Charta* and the *Fundamental Laws* of the *Nation*, 25 *H.* 8. *c.* 21. Likewise the *Clergy* made divers *Canons* and *Constitutions*, which have been conniv'd at for several Ages both by *King* and *Parliament*; yet are declar'd by 25 *H.* 8. *c.* 19 *To be much prejudicial to the Kings Prerogative Royal, and repugnant to the Laws and Statutes of this Realm.* The same may be said of the Ancient Custom of *Archbishops* and *Bishops*, declar'd by 1 *Ed.* 6. *c.* 2. to be contrary to the Common-Law of of the Land, tho practic'd and conniv'd at, time out of mind. And to omit several other Instances, Cardinal *Wolsey* for exercising his *Legantine* Power, and the whole *Clergy* for receiving it, tho conniv'd at for many years as well in as out of *Parliament*, were nevertheless found guilty in a *Premunire* in His Majesties Court of *Kings-Bench*. Connivance therefore is no good *Argument* of any things being legal, and the tolerating of a *Custom*, tho never so long, cannot warrant its continuance, while the *Law* is against it. Presidents indeed of former Ages, when legal and just from the beginning, are of great force in *Judicial* Proceedings; but no new *President* of late days can have that weight in any Court of Justice, and to be sure will never be allow'd, if contrary to *Law* and the *Authentick* Records of *Antiquity*.

But the *House* of *Lords* (say they) use to punish the *Breaches* of their *Priviledges*, and several other *Misdemeanors*; why then may not the *House* of *Commons* do the like? A most ridiculous parity; for they might argue as well, the Court of *Kings-Bench* Fines and Imprisons Delinquents, therefore the *Grand-Jury* may do the like when they please. For the *Commons* in *Parliament* are really the *Grand-Jury* of the Nation, appointed to enquire after Briberyes, Extortions, Monopolies, and other publick Oppressions, and complain thereof to the King and Lords, and humbly pray redress; yet they are no *Judges* in any Case themselves, but are * Parties, as being the *Attorneys* and *Representatives* of those that are injur'd. So far they are from having any *Judicial* Power, that they cannot as much as administer an Oath upon any occasion whatsoever; which undoubtedly the *Law* wou'd not have deny'd them, but that they were never design'd for * *Judges* or punishers of any Crimiminal; because *qui negat Medium, negat & finem.* But the *House* of *Lords* is not only a *Court* of *Judicature*, but the *Supream Court* of the whole *Kingdom*; they are look'd upon by our Laws as persons of no less Integrity, than Honour, in the distribution of Justice; and besides, are assisted by all the *Judges* of *England*, by the 12 *Masters* of *Chancery*, by the *Kings* Learned *Council*, and by His *Attorney* and *Solicitor General*; in consideration whereof the same *Laws* have repos'd that extraordinary trust in this *August Assembly*, that to them

* *None can be Judge and Party*, Coke's 8 *Reports*, *Dr.* Bonham's *Case*. f. 118. b.

The constant Custom of the Commons, *even to this day, to stand bare with their Hats in their hands, while the* Lords *sit cover'd, at all Conferences and Tryals, is a plain Argument they are not Fellows or Colleagues in Judgment.*

alone it belongs to redress delays, and reform the erroneous *Judgments* of other Courts of Justice, and give a final decision to all manner of Appeals. Now by the *Laws* of other *Nations*, as well as ours, 'tis the nature of Superior *Courts*, that they may determine matters tryable by an Inferior; and therefore it must be allow'd, that tho the *House* of *Commons* cannot, because no *Court* of *Judicature*, yet the House of Lords, the *dernier resort* of all Suits and Actions, may, if they please, punish the Invaders of their *Priviledges*, notwithstanding that the Law directs them to be try'd in Inferiour Courts.

Having thus sufficiently demonstrated, that the *House* of *Commons* have neither Common nor Statute-Law, nor yet any legal *Precedents* to warrant their Fining or Imprisoning the meanest of their Fellow-subjects, 'tis high time, I think, tho a great deal more might be said on this subject very useful to be known, to give you a brief account of other Particulars, and examine whether the *Remedies* propos'd in *Parliament* by our late *Mountebanks* of State be not equally dangerous, if not really worse, than our Disease. But to expose the designs of some ill men there, and the unwarrantable *Votes* and *Resolves* they got pass'd in the *Lower House*, is a task no less tedious than difficult for me to undertake. I will therefore tell you in short, that notwithstanding all the noise and clamour they made about the *Protestant Religion* and the *Liberty* of the *Subject*, the Nation had too much reason to believe, they minded more their own ends, than the common good of the People. The *Kings* best Subjects, who having so many years experience of His *Majesties* most happy *Government*, declar'd themselves satisfi'd with His prudent management of Affairs, and in *Obedience* to His *Royal Proclamation*, express'd their aversion to all *Tumultuous Petitions*, were no more run down on the one side, than the *Factious Fanaticks*, even such as signaliz'd themselves in the late *Rebellion*, were countenanc'd and favour'd on the other; insomuch that many were of opinion, people had no surer way to ingratiate themselves with some of the *Leading Memberr*, than openly to asperse the *Government*, and reflect upon the *King* and His *Ministers* as *Favorers* of *Popery*, and *Designers* of *Arbitrary Power*. 'Tis almost incredible what pains they took to get the Notorious *Anabaptist Ben. Harris* discharg'd out of Prison, for no other reason that I find, but because a *Dissenter*, who with a great deal of favour was condemn'd only to the *Pillory* instead of *Tyburn*, for publishing that *Treasonable Pamphlet*, The Appeal. Neither is this all; the main *Bulwark* of our *Church* must be broke down, the Penal *Laws* against the *Non-conformists* Repeal'd, to let in a *Deluge* of *Sectaries*, the scandal of the *Reformation*, who have nothing of Christianity but the Name, to Profane the *Temple* of *God*: And because this *Project* luckily miscarry'd, their Friends in the *House* endeavour'd to leave them a new kind of *Dispensation*, and the very last * day of their sitting, that with their dying breath they might testify to the World their great *zeal* for the Dissenters in general, of what sect or perswasion soever, to the admiration of most men, they pass'd the following Vote.

* 10 *Jan.* 168$\frac{1}{2}$.

Re-

Resolved, *That it is the Opinion of this House, that the Prosecution of* Protestant Dissenters *upon the Penal Laws, is at this time grievous to the Subject, a weakening of the Protestant Interest, an encouragement to* Popery, *and dangerous to the Peace of the Kingdom.*

I need not comment upon this *unwarrantable Resolve*, by which our worthy *Patriots*, even without the *King* and House of *Lords*, once more were pleas'd to assume to themselves a Power of suspending, and consequently of making, *Acts* of *Parliament*. The encouragement this gave to the *Republicans* to pursue their wicked Designs against the *Crown* and the *Church*, like to have prov'd fatal to both, is enough to convince the World, they cou'd hardly do the *Nation* a greater mischief; and that their confining several *Gentlemen*, tho contrary to Law and Reason, was not near so dangerous to the *Government*, as their breaking down the *Rails* of the *Church*, to let a swarm of *Sectaries* creep in at the *Windows*.

It was observ'd with some admiration, how during this *Session* of *Parliament*, there was not one *Fanatick* Imprison'd, nor so much as question'd by the *Commons* for any Crime or Insolence whatsoever, very few *Papists* molested; but the true Sons of the *Church* of *England* daily Prosecuted in vast numbers, to their great loss and vexation, tho it prov'd at last the eternal shame and confusion of the *Authors*.

I cou'd not but smile to see the *perplexity* they were in, when one of the *Judges*, to his never-dying fame, for giving the first *Precedent* of that kind, made application to the *House* of *Commons* about the *Execution* of his *Trust*, and desir'd their *Opinion* whether he shou'd do *Justice* to one of their *Prisoners*, by granting the *Writ* of *Habeas Corpus* to Mr. *Sheridan*, then in the Custody of Serjeant *Topham*. Three several days the Case was stifly debated in the *House*, the *Act* read twice or thrice over, and yet no resolution taken. The *Warrant* of *Committment*, which order'd the *Gentleman* to be confin'd, without any Cause shown, *During the Will and Pleasure of the* House of Commons, was look'd upon so *Illegal* and *Arbitrary* a Procedure, even by several *Members* of the *House*, that Serjeant *M.* till he heard it was already made publick, wou'd have them immediately recal the Old, and grant a New *Warrant* more conformable to Law. Besides, the words of the *Statute* were so full, as admitted of no Comment, and so plain for the *Liberty* of the Subject, as made it undenyable, that *Prisoners*, unless for *Treason* or *Felony*, were still Bailable, by what Person or Persons soever Committed, not excepting the *King* and *Council*, much less the *House* of *Commons*, who had no *Legal* Power to Commit any Criminal. But still the point was very nice, and the *Leading Members* no less uncertain what resolution to take; for if they openly declar'd against the *Habeas Corpus*, the *Nation* wou'd be much alarm'd, and suspect these *Gentlemen*, instead of securing, intended to invade, the Subjects *Liberty*; but if they allow'd the *Writ*, the delicious power of Imprisoning such as they had a picque to, was utterly lost, and all persons referr'd to the ordinary

dinary *Courts of Justice*, or upon their failure, to the *House* of *Lords*, the suprem *Tribunal* of *England*. At last Sir *William Jones*, like an *Imperious Dictator*, starts up to decide the matter, and having made a bawling *Harangue* concerning the Power of the *House*, and their Intention of not binding themselves by that *Act*, which yet must bind the *King*, tho it might as well be alleadg'd He did not intend it, he boldly concludes with threatning and daring the *Judges* to do their duty; *Precibusque minas regaliter addit:* "The same reasons (*says he*) which may be given for discharging "such as are not Committed for breach of Priviledge, if it be grounded on "the Act for the *Habeas Corpus*, will hold as strong for discharging of Per-"sons Committed for breach of Priviledge; and so consequently deprive "this House of all its Power and Dignity, and make it insignificant. This "is so plain and obvious, that all the Judges ought to know it; and I think "it below you to make any Resolve therein, but rather leave the Judges to "do otherwise at their Peril; and let the Debate fall without any question, See the Debates of the House, *pag.* 217. Was not this a rare *Assertor* of our *Liberties*, who instead of allowing us the benefit of the *Laws*, wou'd have us all made *Beasts* of burden to maintain the *Grandeur* of some *Arbitrary Demagogues* in the *House* of *Commons*; and be content to turn *Gally-Slaves*, rather than their Power shou'd become useless or insignificant? But I find this daring Speech did not frighten all the *Judges*; for Baron *Weston*, to his immortal Renown, had still the Courage to grant the *Habeas Corpus*, and rather expose himself to the malice of the *Faction*, than deny or delay Justice, contrary to his Oath.

Our *Religion* and *Liberty* being thus secur'd, have we not reason to be fond of these *worthy Patriots*, who tugg'd so hard against *Popery*, the better to bring in *Presbytery*; and to make sure that the *Prince* shou'd not use *Arbitrary Power*, took all possible care to keep it in their own possession. It was the *Kings Prerogative* in the days of yore to have the Power of making War and Peace, and declaring who shou'd be counted Friends, and who reputed *Enemies* to the *Kingdom*. But now the *Tribunes* of the *People* are willing to ease him of that trouble, and take upon themselves by the following * Vote, to declare some of His *Majesties* best Subjects and most Faithful Friends, *Enemies to the King and Kingdom.*

* 7 Jan. 1680.

Resolved, *That all persons who advis'd His Majesty in His last Message to this House, to insist upon an Opinion against the Bill for excluding the Duke of* York, *have given pernicious Councel to His Majesty, and are promoters of* Popery, *and Enemies to the King and Kingdom:*

And this extravagant *Vote* they are pleas'd particularly to apply to four *Noble Peers* of the *Realm*, exposing them to the *Rable*, without the least colour of proof, for Promoters of *Popery*, and Enemies to their *Soveraign*; for no other reason, but because they were truly *Loyal*, and free from the contagious leaven of the *Faction*. What a happiness it is, to live within the

the *Walls* of the *House* of *Commons*, where the Knave becomes Honest, and the Fool a Politician? where People are sure never to be in the wrong, but always impeccable, and may freely rail and reflect upon their Betters, which without doors wou'd cost them very dear. Yet I cannot but wonder, why these *Noblemen* (unless they, as well as many others, took that *Character* for a mark of *Honour* from the givers) have taken no course, at least with the *Printer* and *Bookseller*, if not with the then *Speaker*, for ordering such *Scandalous* Votes to be publish'd, contrary to expres * *Acts* of *Parliament*. For if the *Kings* immediate Command cannot be allow'd as a good excuse in *Law* for any Illegal Act, so that altho the *Prince* be unaccountable, yet the *Minister* is to suffer for his Obedience; sure a *Vote* of the *House* of *Commons* shall not be thought of force, at least out of *Parliament-time*, to Protect any Offender from Justice; because whatever Title the *Members*, within the sacred *Walls* of the *House*, may claim in some Cases to impunity, their *Officers* and *Servants*, who execute their *Illegal* Commands abroad, cannot in the least pretend to have any.

* 2 R. 2. 5. 11 R. 2. 11. *&c. de Scandalis Magnatum.*

But how shou'd these *Noblemen* be enemies to the *King* and *Kingdom*, for their advising His *Majesty* against the Bill of *Exclusion*, when the whole *House* of *Peers*, (few discontented *Lords* Dissenting, who by their Lives and Conversation never shew'd themselves the truest *Protestants*, nor the best *Subjects*) openly declar'd against it, and upon the first reading threw it out of doors, is a *Mystery* not easily to be understood. His *Majesty* in His *Message* to the *Commons*, declar'd, *He was confirm'd in His Opinion against that Bill by the Judgment of the House of Lords, who rejected it*; why then are four *Lords* singl'd out, and not the whole *House* declar'd *Promoters of Popery, and Enemies to the King and Kingdom?* The reason some will guess, that the *Leading Members* saw matters were not yet ripe, to shew themselves bare-fac'd, or discover the bottom of their Designs, and once more to *Vote* the *House* of *Lords dangerous and useless, and therefore to be laid aside*. But why the *Opposers* of the *Bill* of *Exclusion enemies* to the *King* and *Kingdom*? When 'tis made plain even to *Demonstration* in several Treatises publish'd these four years past about the *Succession*, that the *Promoters* of that *Bill*, tho some perhaps meant otherwise, were in fact *Enemies* to the *Monarchy*, and no Friends to the *King* nor to the True *Protestant Religion*. 'Tis strange that such as loudly exclaim against *Popery*, shou'd have the face at the same time to practice the worst of *Popish*, or rather *Jesuitical* Principles, and endeavour to force their *Soveraign* to disinherit His only *Brother*, upon a bare suspicion of his being of another *Religion*; which *Henry* the 3. of *France*, being tender of the *Monarchy*, and of the *Hereditary* Right of *Succession*, was so far from offering to the *King* of *Navarre*, tho a known *Protestant* and but a remote *Kinsman*, that he cou'd never be perswaded to give the *Royal Assent* to the Bill, which the powerful influence of the Factious Duke of *Guise* got past'd by the three *Estates*, for his Exclusion.

Oh!

Oh! but (ſay they) *Popery* and *Slavery* will break in upon us, if the *Duke* ſucceeds. And I am ſure, *Anarchy* and *Presbytery*, and an Inteſtine *Civil* War, will undoubtedly follow, if he be excluded, the *King* expos'd to danger, and the *Kingdom* to ruine. How fatal it prov'd to *Henry 6.* that he ſuffer'd the good *Duke* of *Glouceſter* to be made away by his Proſecutors, which made way for his own Depoſition, and conſequently for his untimely end, *Hiſtorians* do abundantly teſtify; and *Baker* tells us, how the great *Duke* of *Somerſet*, then *Protector*, by Sacrificing his *Brother* the *Lord Admiral* to the malice of his Enemies, in hopes to ſtop their mouths by yielding to their demands, clear'd the way for himſelf to the Scaffold. "A "Warrant (*ſaith this* Hiſtorian) was ſent, under the hand of his Brother "the Protector, to cut off his Head; wherein (as afterwards it prov'd) he "did as much, as if he had laid his own Head upon the Block: For whilſt "theſe Brothers lived and held together, they were as a ſtrong Fortreſs one "to the other; the Admirals Courage ſupporting the Protectors Authority, "and the Protectors Authority maintaining the Admirals Stoutneſs; but the "Admiral once gone, the Protectors Authority as wanting ſupport, began "to totter, and fell at laſt to utter ruine. Beſides, there was at this time, "amongſt the Nobility, a kind of Faction; *Proteſtants*, who favour'd the "Protector for his own ſake; and other of the *Papal* inclination, who fa-"vour'd him for his Brothers ſake: But his Brother being gone, both ſides "forſook him; even his own ſide, as thinking they could expect little "aſſiſtance from him, who gave no more aſſiſtance to his own Brother, "*Bakers Chronicle* p. 307.

What a noiſe they make about theſe terrible *Bugbears*, *Popery* and *Slavery*, as if both were inſeparable, and actually breaking in upon the *Nation*, or rather come as far as the *Lobby* of the *Houſe* of *Commons*? For my part, tho I have no reaſon to be fond of either, the one being no leſs contrary to my *Nature*, than the other to my *Principles*, yet I cannot be ſtartl'd at every *ſhadow*, nor believe that the *Duke*, having already ſpent the Prime of his days, let him ſucceed never ſo ſoon, will be able to introduce amongſt us any new, much leſs the *Popiſh Religion*. Neither can I be perſwaded, contrary to common ſenſe and the experience of ſo many Ages, but that the *Papiſts* are as fond of their *Liberty* and *Property*, and conſequently as great enemies to *Slavery*, as any *Proteſtant* whatſoever. For, to them we owe the *unparallel'd Common-Law* of this *Realm*, *Magna Charta* and all thoſe wholeſom *Statutes* grounded thereupon; to them we are oblig'd for the *incomparable Frame* of our well-temper'd *Monarchy*, which affords very much to the Induſtry and Happineſs of the Subject, yet preſerves enough for the Majeſty and Prerogative of any King, that will own his People as Subjects, and not as Slaves or Villains. Who then but a Fool or a Mad-man, wou'd think *Slavery* the unavoidable conſequence of that *Religion*, the Profeſſors whereof, even in the time of their blindeſt zeal and greateſt darkneſs, (for ſince then they are much refin'd) made ſuch impregnable *Bulwarks*

works against it, and provided such wholesome *Laws* to defend themselves from all the encroachments of *Arbitrary* Power: Insomuch that the *high* and *mighty Pope* himself, who often endeavour'd to enslave this *Kingdom*, and make it *Tributary* to his avarice, found to his great grief, that tho some ignorant *Bigots* wou'd contribute to fill his *Coffers*, yet the generality of the *Nation* were so tender of their own and their *Princes* Rights, that they always oppos'd him with true *English* Courage; as appears not only by hundreds of adjudg'd Cases reported in our Law-Books, but by divers Records and Acts of *Parliament*. For 25 *Ed.* 3. *Stat. of Provisors*, 'tis enacted, *That such persons as obtain Provisions*, or collation of Benefices from *Rome*, and thereupon disturb the Presentees of the King, or of other Patrons of Holy Church, or of their Advowees, *The said Provisors, their Procurators, Executors and Notaries, shall be attached by their body, and brought in to Answer: And if they be convict, they shall abide in Prison without being let to Mainprise or Bail, or otherwise delivered, till they have made Fine and Ransom to the King at his Will, and agree to the Party that shall feel himself grieved: And nevertheless before they be delivered, they shall make full renunciation, and find Surety, that they shall not attempt such things in time to come, nor sue any Process by them, nor by other against any man in the Court of* Rome, *nor in any part elsewhere, for any such Imprisonments, or Renunciations, nor any other thing depending of them.* And in the same year it was Enacted, that he that purchas'd a *Provision* in *Rome* for an *Abbey*, shou'd be out of the *Kings Protection*, and any man might do with him, as with the *Kings Enemy*, 25 *Ed.* 3. *c.* 22.

[illegible] 3. *c.* 1. upon the grievous *Complaints* of the *Lords* and *Commons* in [illegible]*ment*, "It was ordain'd, that all People of the Kings Ligeance, "of what condition that they be, which shall draw any out of the Realm in "Plea, whereof the cognizance pertaineth to the Kings Court, or of things "whereof Judgements be given in the Kings Court; or which do Sue in "any other Court to defeat or impeach the Judgements given in the Kings "Court, if they appear not within two months after warning given, shall "be put out of the Kings Protection, and their Lands, Goods and Chattles "forfeit to the King, and their Bodies wheresoever they may be found, "shall be taken and Imprisoned, and Ransomed at the Kings will.

13 *R. c.* 2. *'Tis Enacted*, "That if any do accept of a Benefice of Holy "Church contrary to this * Statute, and that duly "prov'd, he shall within six Weeks next after such ac- "ceptation, be exiled and banished out of the Realm "for ever, and his Lands and Tenements, Goods and Chattles shall be for- "feit to the King. And if any Receive any such person banished, coming "from beyond the Sea, or being within the Realm after the said six Weeks, "knowing thereof, he shall be also exiled and banished, and incurr such "forfeiture as afore is said. And their Procurators, Notaries, Executors, "and Summoners shall have the pain and forfeiture aforesaid. And c. 3 It

* 25 Ed. 3. *Statute of Provisors.*

"is ordained and eſtabliſhed, That if any man bring or ſend within the Realm "or the King's power, any Summons, Sentence, or Excommunication a- "gainſt any perſon, of what condition that he be, for the cauſe of making "motion, aſſent, or execution of the ſaid Statute of Proviſors, he ſhall be "taken, arreſted and put in Priſon, and forfeit all his Lands and Tenements, "Goods and Chattels for ever, and incur the pain of life and of member. And "if a Prelate make execution of ſuch Summons, Sentences or Excommuni- "cations, that his Temporalties be taken and abide in the Kings hands, till "due redreſs and correction thereof be made. And if any perſon of leſs "Eſtate than a Prelate, of what condition that he be, make ſuch execution, "he ſhall be taken, arreſted, and put in Priſon, and have Impriſonment, and "make fine and ranſom by the diſcretion of the Kings Councel.

16 *R.* 2. *'tis declar'd*, "That the Crown of *England*, which hath been ſo "free at all times, that it hath been in no earthly ſubjection, but immedi- "ately ſubject to God in all things touching the Regalty of the ſame "Crown, ought not to be ſubmitted to the Pope, nor the Laws and Statutes "of the Realm by him deſeated and avoided at his will, in perpetual deſtru- "ction of the Sovereignty of the King our Lord, His Crown, His Regalty, "and of all His Realm. And moreover, the Commons affirmed, That the "things attempted by the Pope, be clearly againſt the King's Crown and His "Regality, uſed and approved of in the time of all his Progenitors: "Wherefore they and all the Leige-Commons of the ſame Realm, will ſtand "by the King, and His Crown, and His Regalty, in the caſes aforeſaid, and "in all other caſes attempted againſt Him, His Crown, and His Regalty, in "all points, to live and to die.

* 38 *Ed.* 3. *Stat.* 2. c. 1. 2 *H.* 5. c. 4. 7 *H.* 4. c. 6. 3 *H.* 5. c. 4.

These, and ſeveral other * *Statutes*, too tedious [illegible] to be inſerted, have been provided in former ages, when the *Pope's* power was at the higheſt, and provided even by *Popiſh Kings* and *Popiſh Parliaments*, to ſecure themſelves and the Nation from all *Papal* encroachments. Neither have our *Judges* been leſs ſevere againſt the *Pope's* unwarrantable pretenſions, who in purſuance of the *Common-Law* of the Land, tho' no Statute had been made to that purpoſe, judg'd it a very hainous Crime in any Subject of *England* to obey, or put them in execution. In the Reign of King *Edward* I. when a Subject brought a *Bull of Excommunication* from *Rome*, againſt another Subject of this Realm, and publiſh'd it to the *Lord Treaſurer* of *England*: this was by the *Common-Law* of the Land adjudg'd *Treaſon* againſt the *King*, his *Crown* and *Dignity*, 30 lib. *Aſſ.* pla. 19. *Brook* tit. *Præmunire*, pl. 10.

An *Excommunication* by the *Archbiſhop*, albeit it be diſallow'd by the *Pope* or his *Legate*, is to be allow'd; neither ought the *Judges* give any allowance of any ſuch Sentence of the *Pope* or his *Legate*, 16 *E.* 3. tit. *Excom.* 4.

* The ſame is reſolved, 12 *H.* 4. f. 16. 14 *H.* 4. f. 14. 8 *H.* 6. f. 3. 20 *H.* 6. 1. 35 *H.* 6. 42. 7 *E.* 4. 14. 12 *E.* 4. 16.

An * *Excommunication* under the *Popes Bull* is of no force to diſable any man in *England*. And the *Judges* ſaid,

said, That he that pleadeth such *Bulls*, tho' they concern the *Excommunication* of a *Subject*, were in a hard Case, if the *King* would extend his *Justice* against him, 30 *E.* 3. lib. *Ass.* pl. 19.

The *King* presented to a *Benefice*, and his *Presentee* was disturb'd by one that had obtain'd *Bulls* from *Rome*; for which offence he was confin'd to perpetual Imprisonment, 21 *Ed.* 3. f. 40.

One *Marris* being elected *Abbot* of *Waltham*, sent to *Rome* for a *Bull* of *Confirmation*; But it was resolved by all the Judges, that this *Bull* was against the Laws of *England*, and that the *Abbot*, for obtaining the same, was fallen into the King's mercy; whereupon all his Possessions were seiz'd into the *King*'s hands, 46 *Ed.* 3. tit. *Præmunire*, 6.

In the Reign of *Ed.* 4. the *Pope* granted to the *Prior* of St. *Johns* to have *Sanctuary* within his *Priory*; But it was resolved by the Judges, that the *Pope* had no power to grant *Sanctuary* within this *Realm*; and therefore by judgment of the Law the same was disallowed, 1 *H.* 7. f. 20.

In the same *King*'s Reign, a *Legate* from the *Pope* came to *Calais*, to have come into *England*; But the King and his Council would not suffer him to come within the *Kingdom*, until he had taken an Oath, that he should attempt nothing against the *King* or his *Crown*, 1 *H.* 7. f. 10.

And in the Reign of *H.* 7. the *Pope* had excommunicated all such persons whatsoever as had bought Allom of the *Florentines*; But it was resolved by all the Judges of *England*, that the *Popes Excommunication* ought not to be obeyed, or to be put in execution within the *Realm* of *England*, 1 *H.* 7. f. 10. These, and many other such Cases, you may see in the first part of *Coke*'s 5*th.* Reports.

Now, if not only the *Judges*, but the Representative-wisdom of the Nation, even *King*, *Lords*, and *Commons*, in the thickest mist of *Popish* ignorance, were so resolute against the *Bishop* of *Rome*, and so careful to preserve their own *Rights* and *Liberties* inviolable: who can be so silly, as to believe, that a *Popish Prince* in this *Kingdom*, and at this time of the day, when *Popery* it self is much refin'd, and the whole *Nation* irreconcilably bent against it, will ever submit to any *Papal* Usurpation, much less make himself or his People *Slaves* to the *Court of Rome*?

Alas! says one, but our sweet *Abbey-Lands* are in danger to be lost, and reassum'd by the *Popish Clergy*, what course then shall we take to secure them? Believe me, if the Law will not do it, I know no other way, but a *project* I hear shortly to be set on foot for *Insuring* all the *Church-Lands* in the *Kingdom* these 40 years to come. The parties concern'd will propose very reasonable terms, and will undertake, the squinting *Trimmer*, who maliciously whispers about, he wou'd take seven years purchase for his *Church-Lands*, in case of a *Popish Successor*, shall have fourteen well secur'd, whenever the *Duke* succeeds. But why our *Abbey-Lands* more in danger, than any other part of our *Estates*? since we have the same security for the one as for the other, and both as firmly secur'd, as the Law can make them, or the wit of

man deviſe. 'Tis well known, that the *Popiſh* * *Clergy* in Queen *Maries* time, the better to forward the peoples reconciliation with the *Church* of *Rome*, by their *Petition* to the *Queen*, conſented that all the *Church-Lands* diſpos'd of to *Lay-men*, ſhou'd be ſettl'd on the Poſſeſſors and their Heirs for ever, without any danger of revocation; And this was approv'd of by the *Pope's Legate a latere Cardinal Pool*, * *willing and ordaining*, (as he ſays) *that the preſent poſſeſſors of Eccleſiaſtical Goods, as well movable as immovable, ſhall not at this time, nor in time to come, be diſquieted nor moleſted in the poſſeſſion of the ſaid Goods, either by the diſpoſal or order of any General or Provincial Councils, or by the Decretal Epiſtles of the Biſhop of* Rome, *or by any other Eccleſiaſtical Cenſure whatſoever.* And beſides this, to crown the work beyond all exception, and bind it with a triple Cord which is not eaſily broken, all is confirm'd in full *Parliament*, by the *Queen*, by the *Cardinal* and *Clergy*, and by the *Lords* and *Commons*; by whom 'tis enacted, "That all and every Article, "Clauſe, Sentence and Proviſo contained or ſpecified in "any Act or Acts of Parliament, concerning or touching "the aſſurance or conveyance of any the ſaid Monaſte-"ries, Priories, Nunneries, Commandries, Deanries, "Prebends, Colledges, Chantries, Hoſpitals, Houſes of "Fryers, Rectories, Vicarages, Churches, Chappels, "Archbiſhopricks, Biſhopricks, and other Religious "and Eccleſiaſtical houſes and places, or any of them, "or in any ways concerning any Manors, Lands, Tenements, Profits, Com-"modities, Hereditaments, or other the things before ſpecified to the ſaid "K. *H.* 8. or K. *Ed.* 6. or either of them, or any other perſon or perſons, or "Body-politick or Corporate, and every of them; and all and every Wri-"ting, Deed, and Inſtrument concerning the aſſurance of any the ſame, "ſhall ſtand, remain, and be in as good force, effect and ſtrength, and ſhall "be pleaded, and taken advantage of, to all intents, conſtructions, and pur-"poſes, as the ſame ſhould, might or could have been by the Laws and Sta-"tutes of this Realm, in caſe this preſent Act had never been had or made, 1 & 2 *Phil.* & *Mar.* c. 8 §. 39. *And 'tis further enacted*, "That whoſoever "ſhall by any Proceſs obtained out of any Eccleſiaſtical Court within this "Realm or without, or by pretence of any ſpiritual Juriſdiction, or other-"wiſe contrary to the Laws of this Realm, inquiet or moleſt any perſon or "perſons, or body-politick for any Manors, Lands, Tenements, Hereditа-"ments, or things above-ſpecified, contrary to the words, ſentences and "meaning of this Act, ſhall incur the danger of the Act of Præmunire, ib. §. 41.

What cou'd the wit of man contrive or deviſe more firm in Law, or more ſatisfactory

* 1 & 2 *Phil.* & *Mar.* c. 8. num. 32.

* Volentes ac decernentes, quod dictorum bonorum Eccleſiaſticorum tam mobilium quam immobilium poſſeſſores præfati non poſſint in præſenti nec in poſterum, ſeu per Conciliorum Generalium vel Provincialium diſpoſitiones, ſeu Decretales *Rom.* Pontificum Epiſtolas, ſeu aliam quamcunq; cenſuram Eccleſiaſticam in dictis bonis, ſeu eorundem poſſeſſione moleſtari vel inquietari, 1 & 2 *Phil.* & *Mar.* c. 8. num. 33.

satisfactory to all parties concern'd in *Church* or *Abbey-Lands*, than these and several other paragraphs provided in the same *Act of Parliament*? Why then are people by groundless and imaginary fears discompos'd, or frightn'd out of their wits, and made tools to drive on the *Designs* of some ill men, against the *Monarchy* and the *Church*, who will have nothing sufficient to secure them in the *Religion* they have not, but what will unavoidably shake the very foundation of the *Government*? 'Tis true, our *State-Mountebanks* in their *Address* presented in the Name of the *House* of *Commons*, are so dutiful to their *Sovereign*, as humbly to threaten, this may possibly happen, if the *Duke* succeeds: *We further humbly beseech Your Majesty* (say they) *in Your great Wisdom to consider, whether, in case the Imperial Crown of this Protestant Kingdom should descend to the Duke of* York, *the opposition, which may possibly be made to his possessing it, may not only endanger the farther descent in the Royal Line, but even Monarchy it self*, 21 Dec. 1680. But that season, I hope, is over, and the Nation now thorowly sensible of the fatal consequences of such resolutions, and can never forget the unparallell'd *Tyranny* of the *Rump*, nor the doleful *Tragedies* that ensu'd the *Quarrel* between *York* and *Lancaster*, which made *England* a Field of Blood.

But what has this great *Prince*, once the peoples darling, done to deserve so severe a treatment, or be thought so dangerous a person to the Publick? Has he defrauded any of an Ox or an Ass; or was he ever found worse than his word, or unjust in his dealings? If he has chang'd his opinion, which yet is improbable, about the modes and circumstances of Religion, 'tis plain he has not chang'd his moral Principles, nor his natural affection to his Countrey. I need not instance how often he expos'd his Person to danger, like a common Sea-man, to fight our Battles; nor how zealously he always studied the true Interest of the *English* Nation, in opposition to *French* Designs; a truth too well known even to his most inveterate Enemies, but ill rewarded with ingratitude. 'Tis prodigious, what tricks and arts have been us'd of late to incense the unthinking multitude against His Highness, and set them a-madding with the apprehension of Stakes and Faggots, and all the *Chymæra's* of a crack-brain'd fancy: when 'tis palpably evident, it is not in the power of any *Prince*, tho' the greatest Bigot of *Papists*, to force this Nation in point of Conscience, or alter the establish'd Religion; since the Laws *de Heretico comburendo*, (which in Queen *Maries* time were in force, and warranted the Cruelties then committed upon the *Protestants*, as the Statutes made by Queen *Elizabeth*, do the executing of *Priests* and *Jesuits* as *Traytors*, both uncharitable and ill-becoming a Christian-Magistrate) are now happily repeal'd and abolish'd. Why then shou'd people be bugbear'd out of their senses, with imaginary fears of *Smithfield*-Faggots; or think that the *Duke*, who never advis'd his own Children to become *Papists*, wou'd offer, tho' able, to compel any other to renounce his Religion? If He has express'd some kindness for such *Romanists*, as had signaliz'd their Loyalty to His FATHER here, or to His BROTHER abroad,

Abroad, when those that now call themselves true *Protestants*, openly abhor'd his Title, 'tis an instance of his gratitude and good nature, but no Argument of his approving the Opinions of that Party. And yet we have no better proof, than such groundless whispers and surmises, unless we believe the ridiculous *Salamander Doctor*'s peeping through the *Key-hole*, of his being a *Papist*, or any way inclin'd to the *Popish Communion*. How false then is the Preamble (and therefore justly rejected, had there been no other reason, by the *House* of *Lords*) of the intended *Bill* of *Exclusion*, *That the Duke of* York *is notoriously known to have been perverted from the* Protestant *to the* Popish *Religion*? Or the extravagant *Vote*, whereon they grounded this Abortive Bill?

Resolved, *That the Duke of* York, *being a* Papist, *and the hopes of his coming such to the Crown, hath given the greatest countenance and encouragement to the present designs and conspiracies against the King and the Protestant Religion.* . . . 2 Nov. 1680. Whereas it might with greater Truth and Justice be

Resolved, That the late endeavours of some Leading men in the *House* of *Commons* in favour of the *Fanaticks*, and their declaring, *That if His Majesty should come by any Violent Death, they would revenge it to the utmost upon the* Papists; has given the greatest countenance and encouragement to *Colledge* and his Accomplices to conspire against the *King* and the Church; and has openly expos'd His Majesties sacred Life to the blind zeal of the *Faction*; to whom, besides the prospect of destroying their enemies, it was a great temptation to commit the villany, that they cou'd safely leave it at anothers door.

Thus, Sir, I have given you in short my Opinion on Mr. *Hunts Defence* of the *Charter*; and for your further satisfaction have added some *Remarks* on the Proceedings of our worthy *Patriots* (so much commended by that *Gentleman*) in the last *Parliament* at *Westminster*. There remains a great deal more to be said as well of this, as of the other that follow'd at *Oxford*; but some earnest business requiring my attendance, I will at present give you no further trouble, only speak a word or two to the general *Calumny* cast by the *Factions* on all that dare oppose their Designs, and which I cannot well expect to escape, *viz*. *That we are no Friends to Parliaments.* But I appeal to any man of Sense, whether I, who wou'd have the *Commons* freely enjoy their *Priviledges*, yet confin'd within their Ancient and Legal bounds, or the *Fanatick* that labours to make their Power absolute and uncontroulable, be a greater friend to that Honourable *Assembly*? And whether they can possibly have more pernicious enemies, than such as make them *Controullers*, instead of *Counsellors*, to their *Soveraign*, and *Competitors* with him in the *Government*; when their Being wholly depends on his Will and Pleasure, and can expect to sit no longer than during their good *Behaviour*? How *Fatal* the Insolencies of the 3*d*. Estate in *France*, *Anno* 1614. prov'd to that *Nation* in general, who never since had the like *Assembly*, is particularly observ'd by several *Historians*. 'Tis true, we have no reason to mistrust any such thing, having so good and so gracious a *Prince*, as has solemnly engag'd His *Royal* word, *That no Irregularities in Parliament shall ever make Him out of Love with Parliaments*, Declar. p. 9. Besides that our Constitution is such, that we cannot reasonably fear it. Nevertheless, Policy as well as Duty requires, that the *Commons* give no such distast for the future, as will justly occasion even any long intermission of their meeting; since *Parliaments*, provided they behave themselves with Prudence and Moderation, *Are the best method* (as His *Majesty* says) *for healing the Distempers of the Kingdom, and the only means to preserve the Monarchy in that due credit and respect, which it ought to have both at home and abroad.* Ibid.

FINIS.